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## **STATUTES OF ONTARIO 1989**

**First and Second Sessions,  
Thirty-Fourth Legislature**

**37-38 Elizabeth II**

**The Honourable  
Lincoln M. Alexander  
Lieutenant Governor**

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## **LOIS DE L'ONTARIO 1989**

**Première et deuxième sessions,  
trente-quatrième législature**

**37-38 Elizabeth II**

**L'honorable  
Lincoln M. Alexander  
Lieutenant-gouverneur**

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These are the Statutes  
of Ontario that  
received Royal Assent  
during those parts of the  
First and Second Sessions  
of the  
Thirty-Fourth Legislature  
which were held in 1989.

Les lois de l'Ontario  
contenues dans le présent  
volume ont reçu la sanction  
royale au cours des parties  
de la première et  
de la deuxième sessions de  
la trente-quatrième législature  
qui se sont tenues en 1989.

STATS-CAN  
On 52  
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The Honourable  
Lincoln M. Alexander  
Lieutenant Governor

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**PART I**  
**PUBLIC ACTS**

**Chapters 1 to 93**





## CHAPTER 1

### An Act to amend the Education Act

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** Subsection 8 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 32, section 3 and 1984, chapter 60, section 2, is further amended by adding thereto the following clauses:

- (za) issue guidelines respecting the keeping of pupil records and require boards to comply with the guidelines;
- (zb) approve awards for the purpose of subclause 48 (7) (f) (iv);
- (zc) require boards to establish and maintain a policy of affirmative action with respect to the employment and promotion of women;
- (zd) provide an assessment equalization factor,
  - (i) for each municipality, including, for public and secondary school purposes, any part of territory without municipal organization that is deemed to be attached thereto for such purposes and, for public school purposes, any part of territory without municipal organization that is deemed to be annexed thereto for public school purposes,
  - (ii) for each locality,
  - (iii) for each public school section that comprises only territory without municipal organization, and

- (iv) for each separate school zone that comprises only territory without municipal organization, and determine the assessment roll to which each such factor applies;
- (ze) provide interim and final weighting and adjustment factors for the purposes of the regulations;
- (zf) prescribe the number of instalments in which payments of legislative grants shall be paid to boards, the dates upon which the payments shall be made and the amounts of the payments as a percentage of the total amount estimated by the Minister to be payable to the boards;
- (zg) approve the entering into of an agreement by boards under subsection 159a (1).

**(2) Section 8 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 3 and 1984, chapter 60, section 2, is further amended by adding thereto the following subsection:**

Additional  
powers of  
Minister

**(1a) The Minister may, for the purposes of the calculation and payment of legislative grants,**

- (a) approve classes, courses and programs;
- (b) approve adult basic education as defined in subsection 165a (1) provided for boards by,
  - (i) colleges of applied arts and technology, and
  - (ii) community groups; and
- (c) prescribe the standards that shall be attained by a community group in respect of the provision of adult basic education under subsection 165 (3) and the criteria that shall be used to determine whether the standards are attainable.

**2.—(1) Paragraph 14 of subsection 10 (1) of the said Act is amended by striking out “and providing for the payment of moneys to assist in the cost of establishment and maintenance of such schools” in the fifth, sixth and seventh lines.**

**(2) Paragraphs 15 and 16 of the said subsection 10 (1) are repealed and the following substituted therefor:**

15. providing for the holding of examinations for persons to become supervisory officers and governing such examinations

(3) Section 10 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 4, 1984, chapter 60, section 4, 1986, chapter 64, section 12 and 1988, chapter 27, section 2, is further amended by adding thereto the following subsection:

(2) The Metropolitan Toronto School Board may, subject to the regulations in respect of evening classes, provide during the school day or outside the school day a program for adults, who by reason of age do not have the right to attend a school or class operated by the School Board for exceptional pupils whose intellectual functioning is below that of a person with mild retardation and,

Provision  
of evening  
classes  
by The  
Metropolitan  
Toronto  
School Board

- (a) are otherwise qualified to be resident pupils of a board of education that has jurisdiction in The Municipality of Metropolitan Toronto; or
- (b) not being qualified to be resident pupils as mentioned in clause (a), were pupils in such a school or class operated by the School Board.

(4) Clause 10 (3) (a) of the said Act is amended by striking out "providing for" in the first line and inserting in lieu thereof "governing".

(5) Subclause 10 (3) (c) (ii) of the said Act is amended by inserting after "enrolment" in the second line "portion, number, estimate, facility, unit, project".

(6) Clause 10 (3) (c) of the said Act is amended by striking out "and" at the end of subclause (iii) and by adding thereto the following subclauses:

(v) applying factors in the calculation of the grants, and

(vi) authorizing the Minister to adjust amounts of assessment.

(7) Clause 10 (3) (e) of the said Act is amended by striking out "calculating" in the first line and inserting in lieu thereof "determining".

(8) Subsection 10 (3) of the said Act is amended by adding thereto the following clauses:



- (g) providing for the payment of moneys to assist in the cost of the establishment and maintenance of schools referred to in paragraph 14 of subsection (1);
- (h) providing for assistance in the payment of board, lodging and transportation costs of elementary and secondary school pupils;
- (i) governing the provision of assistance for the payment of the cost of education of pupils who,
  - (i) reside in the territorial districts, on lands held by the Crown in right of Canada or Ontario or by an agency of Canada or Ontario or on other lands that are exempt from taxation for school purposes,
  - (ii) are qualified to be resident pupils in respect of a school section, separate school zone or secondary school district in Ontario and receive elementary or secondary education in Manitoba or Quebec, as the case may be, where, in the opinion of the Minister, daily transportation to a school in Ontario or the provision of board, lodging and transportation to and from a school in Ontario once a week is impracticable,
  - (iii) are wards of or in care of a children's aid society, or
  - (iv) are admitted to a centre, facility, home, hospital or institution that is approved, designated, established, licensed or registered under any Act;
- (j) providing for payments to a board for the purpose of limiting in a year the amount of the requisition for public or secondary school purposes or the increase in the mill rate for separate school purposes in respect of,
  - (i) a municipality or part thereof, or
  - (ii) a part of territory without municipal organization that is deemed to be a district municipality,

under the jurisdiction of the board.



(9) Section 10 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 4, 1984, chapter 60, section 4, 1986, chapter 64, section 12 and 1988, chapter 27, section 2, is further amended by adding thereto the following subsections:

(3a) A regulation made under subsection (3) may, Idem

- (a) be general or particular in its application;
- (b) with respect to clause (3) (e), prescribe the maximum amount of any fee that may be charged; or
- (c) with respect to clause (3) (e), provide for the determination of fees by boards.

(12) A regulation made under this section that applies to Idem  
The Metropolitan Toronto School Board may,

- (a) deem The Metropolitan Toronto School Board and the boards of education in The Municipality of Metropolitan Toronto to be one divisional board of education; and
- (b) deem the area municipalities in The Municipality of Metropolitan Toronto to be one urban municipality.

**3. Subsection 48 (6) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 32, section 12, is repealed and the following substituted therefor:**

(6) Despite any other provision of this Part, if a board admits a person who is not a Canadian citizen or a permanent resident to a school that the board operates, the board shall charge the person the maximum fee calculated in accordance with the regulations. Fees for pupils

(7) Subsection (6) does not apply to, Application of sub. (6)

- (a) a person who is a participant in an educational exchange program under which a pupil of the board attends a school outside Canada without a fee;
- (b) a person who enrolled in an elementary school or a secondary school prior to the 1st day of July, 1982;
- (c) a person who is a dependant within the meaning of the *Visiting Forces Act* (Canada);

R.S.C. 1985,  
c. V-2

R.S.C. 1985,  
c. I-2

- (d) a person who is in Canada under a diplomatic, consular or official acceptance issued by the Department of External Affairs;
- (e) a person who claims to be or is found to be a convention refugee under the *Immigration Act* (Canada);
- (f) a person who is in Canada while the person's parent or other person who has lawful custody of the person is in Canada,
  - (i) pursuant to employment authorization or ministerial permit issued by the Department of Employment and Immigration,
  - (ii) under a diplomatic, consular or official acceptance issued by the Department of External Affairs,
  - (iii) awaiting determination of a claim to be found a convention refugee under the *Immigration Act* (Canada),
  - (iv) as a graduate student who is the recipient of an award approved by the Minister for the purposes of this clause and who is in attendance at a university or institution in Ontario, including its affiliated or federated institutions, that receives operating grants from the Ministry of Colleges and Universities, or
  - (v) in accordance with an agreement with a university outside Canada to teach at an institution in Ontario, including its affiliated or federated institutions, that receives operating grants from the Ministry of Colleges and Universities; or
- (g) a person who is in Canada while the person's parent or other person who has lawful custody of the person is in Canada as a convention refugee under the *Immigration Act* (Canada).

**4.—(1)** Subsection 54 (1) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 15 and 1988, chapter 27, section 4, is further amended by adding thereto the following clause:

- (b) assign a name to a divisional board that has jurisdiction in a territorial district.

(2) Subsection 54 (4) of the said Act is amended by inserting after "City of ....." " " in the third and fourth lines "or "Conseil de l'éducation de la cité de ....." " or both".

(3) Subsection 54 (5) of the said Act is amended by inserting after "Education" " " in the third line "or "Conseil de l'éducation du comté de ....." " or both".

(4) Subsection 54 (6) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 15, is further amended by inserting after "Education" " " in the seventh line "or "Conseil de l'éducation de ....." " or both".

(5) Subsection 54 (7) of the said Act is amended by inserting after "Education" " " in the third line "or "Conseil de l'éducation de ....." " or both".

(6) Section 54 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 15 and 1988, chapter 27, section 4, is further amended by adding thereto the following subsection:

- (8) The name of a divisional board may be as follows where Bilingual  
approved by the Minister:

"Conseil de l'éducation de ..... Board of  
Education" (*inserting the name of the  
defined city, county or name approved by  
the Minister or assigned by the regulations*).

5.—(1) Subsection 60 (3) of the said Act is amended by inserting after "of ....." " " in the third line "or "Conseil de l'éducation de ....." " or both".

(2) Subsection 60 (4) of the said Act is amended by inserting after "Education" " " in the third line "or "Conseil de l'éducation de ....." " or both".

6. Subsection 62 (5) of the said Act is amended by inserting after "Board" " " in the third line "or "Conseil du secteur scolaire de district de ....." " or both".

7.—(1) Clause 83 (5) (a) of the said Act is amended by inserting after "Board" " " in the second line "or "Conseil des écoles séparées catholiques de ....." " or both".



(2) Clause 83 (5) (b) of the said Act is amended by inserting after “Board” ” in the third line “or “Conseil des écoles séparées catholiques de .....” or both”.

8. Subsection 84 (2) of the said Act is amended by inserting after “Board” ” in the fifth line “or “Conseil des écoles séparées catholiques de .....” or both”.

9. Subsection 87 (4) of the said Act is amended by inserting after “Board” ” in the third line “or “Conseil fusionné des écoles séparées catholiques de .....” or both”.

10.—(1) Subsection 111 (1) of the said Act is amended by inserting after “Board” ” in the fourth line “or “Conseil des écoles séparées catholiques du comté de .....” or both”.

(2) Subsection 111 (2) of the said Act is amended by inserting after “Board” ” in the fifth line “or “Conseil des écoles séparées catholiques du comté de .....” or both”.

(3) Subsection 111 (3) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 35, is further amended by inserting after “Board” ” in the amendment of 1982 “or “Conseil des écoles séparées catholiques du district de .....” or both”.

(4) Subsection 111 (4) of the said Act is amended by,

- (a) striking out “117 and 118” in the second line and inserting in lieu thereof “116 and 117”; and
- (b) inserting after “Board” ” in the fifth line “or “Conseil des écoles séparées catholiques de .....” or both”.

(5) Section 111 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 35, is further amended by adding thereto the following subsection:

Bilingual

(5) The name of a county or district combined separate school board may be as follows where approved by the Minister:

“Conseil des écoles séparées catholiques de ..... de (County or District) Roman Catholic Separate School Board” (*inserting the name of the county or counties, district or districts, name selected by the board and approved by the Minister or name of area designated by the regulations*).

**11.** Subsection 116 (2) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 22, is further amended by inserting after "Board" " " in the third line "in English and "Conseil des écoles séparées catholiques d'Ottawa" in French".

**12.** Subsection 117 (2) of the said Act is amended by inserting after "Board" " " in the third line "in English and "Conseil des écoles séparées catholiques de Carleton" in French".

**13.** Section 130 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 23, section 8, is further amended by adding thereto the following subsections:

(5a) Where the arbitrators conclude that it would be more just and equitable in the interests of the supporters of the board for the board when setting the rates to be levied in a year to have apportioned its requirements in accordance with a regulation made under section 214 in respect of the year, the arbitrators shall so advise the board when they have determined and reported the factors under subsection (5).

Apportionment under s. 214

(5b) After being advised under subsection (5a), the board may resolve to apportion its requirements in accordance with the regulation that applies for the year.

Resolution of board

(5c) A board that resolves to apportion under subsection (5b) shall forthwith notify the Minister of its decision.

Notice

(5d) The review referred to in section 214 does not apply in the case of a board that acts under subsection (5b).

Non-application

**14.—(1)** Subsection 136e (2) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 21, section 2, is amended by inserting after "to" in the second line "in addition to conditions that may be made under clause 10 (3) (b)".

**(2)** Section 136e of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 21, section 2, is amended by adding thereto the following subsection:

(5) A regulation made for the purposes of this section,

Regulations

(a) may be general or particular in its application; or

(b) may provide for the withholding or repayment of all or part of a grant where a condition of the grant is not satisfied.

**15. Section 136i of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 21, section 2, is amended by adding thereto the following subsections:**

Application  
of sub. (1)

(1a) Subsection (1) does not apply where a public board has part of the same area of jurisdiction as a Roman Catholic school board as a result of the fact that a separate school zone that comprises part of the county or district combined Roman Catholic separate school zone for which the Roman Catholic school board was established has a centre that is situate within 4.8 kilometres of the boundary of the public board and is not situate within the area of jurisdiction of the public board.

Idem

(1b) Part VII-A applies with respect to the election of members elected by separate school electors to a public board to which subsection (1a) applies as if the coterminous Roman Catholic separate school board as defined in subsection 206a (1) was not a Roman Catholic school board.

**16. Section 145 of the said Act is amended by inserting after “the ...” in the third line “or “Conseil des écoles séparées protestantes de ...” or both”.**

**17.—(1) Paragraph 19 of subsection 150 (1) of the said Act is amended by inserting after “moneys” in the first line “other than moneys held in a reserve fund and that are”.**

(2) Subsection 150 (1) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 40 and 1984, chapter 60, section 10, is further amended by adding thereto the following paragraph:

idem

19a. invest moneys held in a reserve fund in,

R.S.O. 1980,  
c. 218

i. guaranteed contracts issued by an insurer licensed under the *Insurance Act*, and

R.S.O. 1980,  
c. 512

ii. such securities as a trustee may invest in under the *Trustee Act* provided that all interest and gain thereon is credited to the fund from which the moneys are invested.

(3) Paragraph 38 of subsection 150 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 60, section 10, is amended by adding at the end thereof “or a demonstration school for exceptional pupils”.

(4) Subsection 150 (1) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 40 and 1984,



**chapter 60, section 10, is further amended by adding thereto the following paragraph:**

46. designate portions of current expenditure of the board as ordinary expenditures for the purposes of legislative grants provided for by a regulation made under subsection 10 (3). designation of expenditures

**18. The said Act is amended by adding thereto the following section:**

**150a.** Where in any Act, other than this Act, a board, other than a board that by an Act is given a name in the French language, is given a name in English, the board shall be known by such name in French as the board may by resolution select and the Minister may approve. Board name

**19. Section 154 of the said Act is amended by adding thereto the following paragraph:**

- 1a. provide for any or all of the members of the board any benefit that may be provided for the employees of the board under section 155 and any other benefits of a like nature that the board considers appropriate. benefits

**20. Subclause 155 (1) (a) (i) of the said Act is amended by adding at the end thereof “and their spouses and children”.**

**21. The said Act is further amended by adding thereto the following section:**

**159a.**—(1) A public board that has jurisdiction in an area that is also the area or part of the area of jurisdiction of a Roman Catholic school board may, with the approval of the Minister, enter into an agreement with the Roman Catholic school board to transfer a secondary school established and operated under Part XI or a French-language instructional unit as defined in section 277c to the Roman Catholic school board. Transfer of French-language instructional unit

(2) A transfer of a secondary school referred to in subsection (1) is not a closing of the secondary school. Transfer not a closing

**22. Section 165a of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 32, section 45, is amended by adding thereto the following subsection:**

(3) A board may, in respect of persons who reside in the area of jurisdiction of the board, enter into an agreement in Idem



writing with a community group for the provision by the group of adult basic education that is approved by the Minister.

**23.** Subsection 166 (2) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 55, section 216, is further amended by,

- (a) striking out “severe learning disabilities” in the fifth line and inserting in lieu thereof “severe communicational exceptionalities”; and
- (b) striking out “premises approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act, 1984* for the provision of a child development service or child treatment service” in the amendment of 1984 and inserting in lieu thereof “a place where an agency approved under subsection 8 (1) of Part I (Flexible Services) of the *Child and Family Services Act, 1984* provides a child development service, a child treatment service or a child and family intervention service”.

**24.** Subsection 167 (1), as re-enacted by the Statutes of Ontario, 1982, chapter 32, section 47, subsections (1a), (1b) and (1c), as enacted by the Statutes of Ontario, 1982, chapter 32, section 47, and subsection (2), as re-enacted by the Statutes of Ontario, 1982, chapter 32, section 47, of the said Act are repealed and the following substituted therefor:

Allowance  
for members

(1) A board may pay to each member of the board an allowance in such amount that is determined by the board to be payable to the members thereof.

Chairman  
and vice-  
chairman

(2) A board may pay an allowance in such amount as is determined by the board in addition to the allowance payable under subsection (1) to the chairman and vice-chairman of the board and to the chairmen of committees of the board.

Different  
allowances

(2a) The additional allowance payable to the chairman may differ from the additional allowance payable to the vice-chairman.

Basis of  
allowance

(2b) A member of a board of education elected by separate school electors, a member of the board elected for the purposes of Part XI-A and a member appointed to the board is entitled to an allowance on the same basis as a member of the board elected by public school electors.

(2c) A trustee of a separate school board elected for the purposes of Part XI-A or appointed to the board is entitled to an allowance on the same basis as a trustee who is elected, other than for the purposes of Part XI-A, by separate school electors. Idem

(2d) A board may at any time decrease any allowance payable to members, the chairman or the vice-chairman of the board. Decrease in allowance

(2e) Where the French-language education council, English-language education council, French-language section or English-language section of a board has a chairman or a vice-chairman of the council or section, as the case may be, the council or section may authorize an additional allowance, not to exceed that paid to the chairman or vice-chairman of the board under subsection (2), to be paid to the chairman or vice-chairman of the council or section. Chairman and vice-chairman of council or section

(2f) A chairman or vice-chairman of a council or section may only be paid one additional allowance. Idem

(2g) An allowance payable under subsection (1), (2) or (2e) with respect to a French-language education council or French-language section shall be included as part of centralized services for the purposes of allocating amounts under section 277n. Allocation of cost

**25.** Subsection 196 (1a) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 32, section 53, is amended by striking out “subsection (2)” in the eleventh line and inserting in lieu thereof “subsection (3)”.

**26.** Subsection 217 (1) of the said Act is amended by,

- (a) adding after “note” in the fourth line “or a banker’s acceptance that is drawn as a bill of exchange under the *Bills of Exchange Act* (Canada) on a bank to which the *Bank Act* (Canada) applies”; and
- (b) striking out “minimum lending rate of the majority of chartered banks on the date of borrowing” in the ninth and tenth lines and inserting in lieu thereof “prime lending rate on the date of borrowing, of the chartered banks listed in Schedule A of the *Bank Act* (Canada)”.

**27.** Subsection 237 (1) of the said Act is amended by adding at the end thereof “and the guidelines issued by the Minister”.



**28. Section 252 of the said Act is amended by adding thereto the following subsections:**

Idem

(2) Two or more boards of education that each have an enrolment in its public and secondary schools of fewer than 2,000, two or more district school area boards or a board of education and a district school area board may with the approval of the Minister agree to appoint a supervisory officer as director of education to be responsible to the boards for the development, implementation, operation and supervision of educational programs in the schools of the boards.

Idem

(3) Two or more county or district combined separate school boards that each have an enrolment in its schools of fewer than 2,000, two or more rural or combined separate school boards or a rural or combined separate school board and a district combined separate school board may with the approval of the Minister agree to appoint a supervisory officer as director of education to be responsible to the boards for the development, implementation, operation and supervision of educational programs in the schools of the boards.

**29. Subsections 277s (1), (2) and (3) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 11, are repealed and the following substituted therefor:**

Notice to  
Minister

(1) Where a French-language section becomes aware that it will not be operating a French-language instructional unit and it will not be providing education for at least 285 resident pupils of the board or at least 9.50 per cent of the resident pupils of the board pursuant to an agreement as described in subsection 277d (2) or (3), the French-language section shall forthwith notify in writing the full board of such fact and the effective date thereof and the board shall forthwith notify in writing the Minister.

Dissolution

(2) Unless the notice to the Minister under subsection (1) is revoked, the French-language section of a board in respect of which a notice is required to be given to the Minister is dissolved on the thirtieth day next following the date upon which the section ceases to operate a unit or provide the education referred to in subsection (1) and the members shall cease to hold office on that date.

Revocation  
of notice

(3) A board, upon written request of the French-language section of the board that is received before the dissolution of the French-language section of the board, shall revoke by notice in writing delivered to the Minister, a notice given to the Minister under subsection (1).

(3a) Where a public board agrees to transfer a secondary school established and operated under Part XI to a Roman Catholic school board under section 159a, the agreement to transfer is not an agreement referred to in subsections 277d (2) and (3).

Section 159a  
agreement  
distinguished

**30.—(1) Subclause 127 (1) (g) (v) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

(v) may provide for expenditures for permanent improvements as defined in paragraph 34 of subsection 1 (1) of the *Education Act* and for an allocation to a reserve fund, provided that the total of expenditures for permanent improvements referred to in subparagraphs i, ii and iii of paragraph 34 of subsection 1 (1) of that Act and any sum allocated to a reserve fund do not exceed,

R.S.O. 1980,  
c. 129

(A) for secondary school purposes, an amount that would increase the sum that would be required to be raised by levy for secondary school purposes in the Metropolitan Area if no such provision for expenditures and allocation were made, by an amount calculated at one mill of the dollar upon the total equalized assessments of the area municipalities for public secondary school purposes, and

(B) for public school purposes, an amount that would increase the sum that would be required to be raised by levy for public school purposes in the Metropolitan Area if no such provision for expenditures and allocation were made, by an amount calculated at one mill in the dollar upon the total equalized assessments of the area municipalities for public elementary school purposes.

**(2) Subsection 127 (1b) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 9, section 6, is repealed and the following substituted therefor:**

(1b) The School Board may pay an allowance in such amount as is determined by the School Board in addition to

Allowance to  
vice-chairman



the allowance payable under clause (1a) (a) or (b) to the vice-chairman of the School Board.

Different  
allowances

(1ba) An allowance payable to the chairman may differ from that payable to the vice-chairman.

(3) Subsection 127 (1c) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 9, section 6, is amended by inserting after “subsection (1a)” in the second line “or (1b)”.

(4) Subsection 127 (7) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 9, section 6 and amended by the Statutes of Ontario, 1984, chapter 10, section 1, is further amended by adding thereto the following clause:

(ba) “total equalized assessments of the area municipalities” means for public secondary school purposes and for public elementary school purposes the sum of the assessment upon which taxes are levied for such purposes in each area municipality in the year for which the estimates are approved in whole or in part by the School Board where the assessment of each area municipality is adjusted by the application of the latest equalization factor applicable thereto that is provided by the Minister.

Reserve fund  
for public  
school  
purposes,  
application  
in 1989

**31.** Moneys that were held by a municipality as of the 31st day of December, 1986 and are still being held and were derived from the Ontario Municipalities Fund or from any other source for public school purposes, except the collection of rates, shall be applied by the municipality in the year 1989 to reduce the rate that would otherwise be required to be levied for public school purposes in the municipality.

Commence-  
ment

**32.—(1)** This Act, except section 13, comes into force on the day it receives Royal Assent.

Idem

(2) Section 13 shall be deemed to have come into force on the 1st day of January, 1988.

Short title

**33.** The short title of this Act is the *Education Amendment Act, 1989*.

## CHAPTER 2

### An Act to amend the Education Act

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** Subsection 1 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 17, 1982, chapter 20, section 2, 1982, chapter 32, section 1, 1984, chapter 60, section 1, 1986, chapter 21, section 1 and 1988, chapter 27, section 1, is further amended by adding thereto the following paragraphs:

- 6a. “continuing education instructor” means a person employed to provide instruction in a continuing education course or class established in accordance with the regulations other than those courses or classes for which a valid certificate of qualification or a letter of standing as a teacher is required by the regulations;
- 6b. “continuing education teacher” means a teacher employed to teach a continuing education course or class established in accordance with the regulations for which a valid certificate of qualification or a letter of standing as a teacher is required by the regulations.

(2) Paragraph 31 of subsection 1 (1) of the said Act is amended by adding after “probationary” in the second line “, continuing education teacher”.

**2.—(1)** Paragraph 13 of subsection 10 (1) of the said Act is amended by striking out “permanent teacher or a probationary teacher” in the third line and inserting in lieu thereof “permanent, probationary or continuing education teacher”.

(2) Subsection 10 (1) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 4 and 1989,

**chapter 1, section 2, is further amended by adding thereto the following paragraphs:**

idem 15a. defining and governing continuing education courses and classes;

continuing education courses and classes 15b. prescribing the continuing education courses and classes for which a valid certificate of qualification or a letter of standing as a teacher is required.

**3. Paragraph 29 of subsection 150 (1) of the said Act is repealed and the following substituted therefor:**

continuing education 29. establish continuing education courses and classes.

**4. Subsection 230 (1) of the said Act is repealed and the following substituted therefor:**

Full-time or part-time teacher (1) A full-time or part-time teacher who is employed by a board shall be employed as a permanent or probationary teacher with respect to those teaching duties with the board that are not related to the teacher's employment as an occasional teacher, a continuing education teacher or a continuing education instructor.

**5. The said Act is amended by adding thereto the following section:**

Continuing education teachers **230a.**—(1) A continuing education teacher shall be employed on a contract of employment in writing in the form of the continuing education teacher's contract prescribed by the regulations.

Application of subs. (1) (2) Subsection (1) does not apply to an occasional teacher who is employed as a substitute for a continuing education teacher.

Contract (3) A continuing education teacher's contract shall be signed by the parties and sealed with the seal of the board before or after the teacher enters upon the duties of the teacher.

Full-time or part-time teacher and continuing education teacher (4) A teacher who is employed by a board as a continuing education teacher may be employed by another board as a full-time or part-time teacher.

Permanent or probationary teacher and continuing education teacher (5) Notwithstanding subsection (1), where a teacher and a board agree, a full-time or part-time teacher who is employed by the board as a permanent teacher and as a continuing edu-



cation teacher or as a probationary teacher and a continuing education teacher may be employed under the teacher's contract as a permanent teacher or probationary teacher, as the case requires.

(6) Notwithstanding subsection (1), where a teacher and a board agree, a teacher employed by the board as a permanent teacher or as a probationary teacher with duties only as a continuing education teacher may be employed with respect to those duties under the teacher's contract as a permanent teacher or as a probationary teacher, as the case requires.

Permanent or probationary teacher as continuing education teacher only

**6.—(1) Section 231 of the said Act is amended by adding thereto the following subsection:**

(1a) In subsection (1), a reference to school days in respect of a continuing education teacher shall be deemed to be a reference to the days upon which the class taught by the teacher is required to be taught and a reference to a school year is deemed to be a reference to the number of days during which the program of which the class is a part is scheduled by the board.

School days and school year

**(2) Subsection 231 (7) of the said Act is amended by,**

- (a) inserting after "section 230" in the sixth line "or no contract has been entered into under section 230a"; and
- (b) inserting after "writing" in the eighth line "or a contract".

**7. This Act comes into force on the 1st day of May, 1989.**

Commencement

**8. The short title of this Act is the *Education Amendment Act, 1989 (No. 2)*.**

Short title





## CHAPTER 3

### **An Act to amend the Retail Business Holidays Act**

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Clause 1 (1) (a) of the *Retail Business Holidays Act*, being chapter 453 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (a) "holiday" means,
  - (i) New Year's Day,
  - (ii) Good Friday,
  - (iii) Victoria Day,
  - (iv) Canada Day,
  - (v) Labour Day,
  - (vi) Thanksgiving Day,
  - (vii) Christmas Day,
  - (viii) the 26th day of December,
  - (ix) Sunday, and
  - (x) any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of this Act;
- (aa) "municipality" means, except in section 6,
  - (i) a local municipality, other than a local municipality within a metropolitan, regional or district municipality or the County of Oxford,

- (ii) a metropolitan, regional or district municipality and the County of Oxford.

**2. Subsection 2 (1) of the said Act is repealed and the following substituted therefor:**

Prohibition

(1) No person carrying on a retail business in a retail business establishment shall,

- (a) sell or offer for sale any goods or services therein by retail; or
- (b) admit members of the public thereto,

on a holiday.

**3.—(1) Clause 3 (2) (c) of the said Act is repealed and the following substituted therefor:**

- (c) the total area used for serving the public or for selling or displaying to the public in the establishment is less than 7,500 square feet.

**(2) Subsection 3 (4) of the said Act is repealed and the following substituted therefor:**

Transition

(4) Despite clause (2) (c), until the 365th day following the day this subsection comes into force, the maximum total area that may be used in a pharmacy for serving the public or for selling or displaying to the public may exceed 7,500 square feet.

**(3) Subsection 3 (8) of the said Act is repealed.**

**4. Section 4 of the said Act is repealed and the following substituted therefor:**

Municipal powers

**4.—(1)** Despite sections 2 and 3, the council of a municipality may by by-law permit retail business establishments to be open on any holiday or may require that retail business establishments be closed on any holiday.

Public meeting

(2) Before passing a by-law under subsection (1), the council of a municipality,

- (a) shall hold a public meeting in respect of the proposed by-law;
- (b) shall publish notice of the public meeting in a newspaper having general circulation in the municipality

at least thirty days before the meeting is to be held;  
and

- (c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed by-law.

(3) The Lieutenant Governor in Council may by regulation, in respect of retail business establishments in territory without municipal organization, exercise the same powers that a council of a municipality may by by-law exercise under subsection (1).

Regulations,  
territory  
without  
municipal  
organization

(4) A by-law or regulation under this section does not apply so as to prevent the sale or offering for sale of goods and services exempted under subsection 3 (5) or (7) from the operation of section 2.

Limitation

(5) A by-law or regulation under this section may be restricted to one or more retail business establishments or to any class or classes of retail business establishment as specified in the by-law or regulation.

Application  
of by-law or  
regulation

(6) A by-law or regulation under this section,

Contents of  
by-laws and  
regulations

- (a) may apply to any part or parts of the municipality or territory;
- (b) may limit the opening of retail business establishments on holidays to specific times or to a certain number of hours;
- (c) may permit the opening or require the closing of retail business establishments on certain holidays and not on others;
- (d) may restrict the opening of retail business establishments on holidays to specific periods of the year or require the closing of retail business establishments on holidays during specific periods of the year;
- (e) may classify retail business establishments by size, number of persons employed, character of business, geographic location or any other criteria.

(7) The council may establish a plan setting out the criteria to be considered by it in determining whether a by-law should be passed under subsection (1).

Establish-  
ment  
of plan



Plan to be  
made public

(8) If the council adopts a plan, it shall ensure that the plan is made available to the public by publishing it in a newspaper having general circulation in the municipality.

Sunday  
exception

5.—(1) Despite any other provision of this or any other Act or the by-laws or regulations under this or any other Act, a retail business may be carried on in a retail business establishment on a Sunday if the retail business establishment is always closed to the public throughout another day of the week by reason of the religion of the owner of the retail business.

Definition

(2) For the purpose of subsection (1), “religion of the owner” means,

- (a) in the case of a sole proprietorship, the religion of the sole proprietor;
- (b) in the case of a partnership, the religion named in a written agreement between the partners which is the religion of one of the partners;
- (c) in the case of a corporation, the religion named in the by-laws of the corporation.

Affiliated  
corporation

(3) The exception set out in subsection (1) does not apply to a corporation that is the affiliate of another corporation unless all the retail business establishments in Ontario of the corporation and its affiliates close on the same day.

Deemed  
affiliation

(4) For the purposes of this section,

- (a) a corporation shall be deemed to be affiliated with another corporation if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person; and
- (b) the affiliates of every corporation shall be deemed to be affiliated with all other corporations with which the corporation is affiliated.

Deemed  
control

(5) For the purposes of this section, a corporation shall be deemed to be controlled by a person if,

- (a) securities of the corporation to which are attached more than 50 per cent of the votes that may be cast to elect directors of the corporation are held other than by way of security only by or for the benefit of that person; and

- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

(6) For the purposes of this section, a corporation shall be deemed to be a subsidiary of another corporation if, Deemed subsidiaries

- (a) it is controlled by,

- (i) that other,

- (ii) that other and one or more corporations each of which is controlled by that other, or

- (iii) two or more corporations each of which is controlled by that other; or

- (b) it is a subsidiary within the meaning of clause (a) of a corporation that is that other's subsidiary.

**5a.** A provision in a lease or other agreement that has the effect of requiring a retail business to remain open on a holiday is of no effect even if the lease or agreement was made before the coming into force of this section. Provisions requiring holiday openings invalid

**5. Section 6 of the said Act is repealed and the following substituted therefor:**

**6.—(1)** Subject to subsection (2), a by-law of a municipality passed under any other Act is invalid to the extent that it requires the closing of a retail business establishment on a holiday. Invalidity of certain municipal by-laws

(2) A by-law of a municipality that was in force under this or any other Act immediately before the coming into force of this subsection and that relates to the opening or closing of a retail business establishment on holidays continues in force until the 1st day of January, 1994 or until repealed, whichever occurs first. Transition

(3) In this section, "municipality" means any municipality and includes a metropolitan, district or regional municipality and the County of Oxford. Definition

**6. Section 7 of the said Act is repealed and the following substituted therefor:**

**7.—(1)** Every person who contravenes section 2 or a regulation under section 4 is guilty of an offence and on conviction is liable to a fine of not more than the greater of, Penalty

(a) \$50,000; or

(b) the gross sales in the retail business establishment on the holiday on which the contravention occurred.

Idem,  
municipal  
laws

(2) A by-law under subsection 4 (1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the by-law is guilty of an offence and on conviction is liable to a fine of not more than the greater of,

(a) \$50,000; or

(b) the gross sales in the retail business establishment on the holiday on which the contravention occurred.

Idem,  
coercion or  
counselling

(3) Every person who coerces, requires or counsels another person to contravene section 2, a regulation under section 4 or a by-law under subsection 4 (1) is guilty of an offence and on conviction is liable to a fine of not more than the greater of,

(a) \$50,000; or

(b) the gross sales in the retail business establishment on the holiday in respect of which the offence under this subsection occurred.

Gross sales  
to be  
considered in  
determining  
fines

(4) In determining the amount of the fine, the court shall take into consideration any evidence respecting the gross sales in the retail business establishment on the holiday on which the contravention occurred.

Advertise-  
ments  
admissible as  
evidence

(5) A sign or advertisement giving the hours of a retail business establishment is admissible as evidence that the retail business establishment was open during those hours.

Determi-  
nation of  
total area  
of a retail  
business  
establishment

(6) For the purpose of enforcing this Act or a by-law or regulation under this Act, the total area of a retail business establishment used for serving the public or for selling or displaying to the public on a holiday shall be deemed to be the greater of,

(a) the total area actually used on a holiday for serving the public or for selling or displaying to the public; and



- (b) the total area normally used for serving the public or for selling or displaying to the public on days other than a holiday.

(7) Subsection (6) does not apply to any retail business establishment, other than a pharmacy, until the 365th day following the day this subsection comes into force. When subs. (6) to apply

**8.—**(1) Upon the application of counsel for the Attorney General or of a municipality to the Supreme Court, the court may order that a retail business establishment close on a holiday to ensure compliance with this Act or a by-law or regulation under this Act. Court orders

(2) An order under subsection (1) is in addition to any other penalty that may be imposed and may be made whether or not proceedings have been commenced in the Provincial Offences Court for a contravention of section 2 or of a by-law or regulation under this Act. Idem

**7. This Act comes into force on the day it receives Royal Assent.** Commencement

**8. The short title of this Act is the *Retail Business Holidays Amendment Act, 1989*.** Short title



## CHAPTER 4

### An Act to amend the Employment Standards Act

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Clause 1 (l) of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is amended by inserting after "Christmas Day" in the third line "and the 26th day of December".

**2.** Part XI-B of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 7, section 1, is amended by adding thereto the following sections:

**39g.**—(1) This section and sections 39h to 39k apply only to retail business establishments, as defined in section 1 of the *Retail Business Holidays Act*, and to the employees and employers in such retail business establishments and to persons acting on behalf of such employers.

Application  
of sections  
39g to 39k  
R.S.O. 1980,  
c. 453

(2) In sections 39h and 39k,

Definitions

"employee" means an employee to whom the section applies;

"employer" means an employer to whom the section applies.

**39h.** Except as provided in this Part, an employee may refuse any assignment of Sunday work that the employee considers unreasonable.

Right to  
refuse  
Sunday work

**39i.**—(1) No employer or person acting on behalf of an employer shall,

Prohibition

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend an employee;
- (c) impose any penalty on an employee; or
- (d) intimidate or coerce an employee,



because the employee has refused an assignment of Sunday work that the employee considers unreasonable.

Exception

(2) Subsection (1) does not apply if, following an agreement between the employee and employer reached with the assistance of an employment standards officer under subsection 39j (3), or if, following the decision of a referee under subsection 39k (3), the employee fails to work in accordance with the agreement or decision.

Role of  
employment  
standards  
officer

**39j.**—(1) If an employee and an employer dispute that an assignment of Sunday work is unreasonable or if an employee has refused an assignment of Sunday work on the basis that it was unreasonable, either the employee or the employer may apply to the Director for the appointment of an employment standards officer to inquire into and endeavour to effect a settlement of the matter.

Idem

(2) If an employee is of the opinion that the employee's employer or a person acting on the employer's behalf has contravened subsection 39i (1) against the employee, the employee may apply to the Director for the appointment of an employment standards officer to inquire into and endeavour to effect a settlement of the matter.

Idem

(3) Upon receipt of an application under subsection (1) or (2), the Director shall forthwith appoint an employment standards officer who shall forthwith inquire into and endeavour to effect a settlement of the matter.

Hearing by  
referee

**39k.**—(1) If, following an inquiry under subsection 39j (3), an employment standards officer reports to the Director that a settlement cannot be reached, the Director shall appoint a referee from the panel of referees and the referee shall convene a hearing as soon as is practicable for the purpose of determining the matter.

Determin-  
ation of  
unreason-  
ableness

(2) In a hearing under this section, the referee shall determine whether the disputed Sunday work assignment is or was unreasonable and, without restricting the generality of the foregoing, may take into account,

- (a) the terms of a collective agreement that specifically address Sunday work, if the employee is a member of the bargaining unit;
- (b) the existence of a premium pay arrangement for Sunday work by the employee that is not less than one and one-half times the regular rate of pay of the employee;

- (c) the existence of a policy of the employer to rotate staff to avoid inequitable assignment of Sunday work;
- (d) the history of the work relationship including previous requirements respecting Sunday work assignments;
- (e) the fact that the employer has or has not made reasonable efforts to hire additional staff to permit reasonable scheduling of Sunday work;
- (f) the fact that the employee was hired on a part-time basis for the specific purpose of permitting reasonable scheduling of Sunday work by other employees of the employer;
- (g) the existence of an emergency situation.

(3) Following a hearing under this section, a referee,

Powers of  
referee

- (a) may decide what constitutes reasonable assignment of Sunday work in respect of the employee and employer to whom the hearing relates;
- (b) if the referee decides that subsection 39i (1) has been contravened, may order what action, if any, the employer or other person shall take or what the employer or other person shall refrain from doing in order to constitute compliance with this Part and may make an order to reinstate the employee in employment, with or without compensation, or to compensate the employee in lieu of reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the referee against the employer.

(4) A referee may refuse to make an order in respect of a contravention of subsection 39i (1) if the referee is of the opinion that the employee's refusal of Sunday work was made in bad faith or if the contravention was the result of a contravention by the employee of a settlement reached between the employee and the employer with the assistance of an employment standards officer under subsection 39j (3) or a decision of a referee under clause (3) (a) of this section. Idem

(5) An order under clause (3) (b) shall specify that all funds be paid to the Director in trust. Idem

Application  
of subss.  
47 (4-6)

(6) Subsections 47 (4) to (6) apply with necessary modifications to an order under clause (3) (b).

Decisions  
and orders  
final

(7) The decisions and orders of the referee are final.

Commence-  
ment

**3. This Act comes into force on the day it receives Royal Assent.**

Short title

**4. The short title of this Act is the *Employment Standards Amendment Act, 1989*.**



## CHAPTER 5

### An Act to amend the Planning Act, 1983

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Clause 1 (e) of the *Planning Act, 1983*, being chapter 1, is repealed and the following substituted therefor:**

(e) "Minister" means the Minister of Municipal Affairs.

**2. Section 2 of the said Act is amended by striking out "and" at the end of clause (h) and by adding thereto the following clause:**

(j) the provision of a range of housing types.

**3. Section 3 of the said Act is amended by adding thereto the following subsection:**

(6) Except as provided in subsection (5), nothing in this section affects nor restricts the Minister in the carrying out of the Minister's duties and responsibilities under any other section of this Act including the determining or declaring of any matter to be a matter of provincial interest and the procedure followed in so determining or declaring.

Non-  
applicability  
of section

**4. Section 4 of the said Act is amended by adding thereto the following subsection:**

(2a) Despite subsections (1) and (2), where the Minister has delegated the authority of the Minister under section 52 for the granting of consents, subsections 52 (2) to (9) and (15) to (22) apply with necessary modifications and subsections 52 (10) to (14) do not apply, in the exercise of that authority.

Where  
authority to  
grant  
consents  
delegated

**5.—(1) Subsection 5 (1) of the said Act is repealed and the following substituted therefor:**

(1) Where the Minister has delegated any authority to a council under section 4, such council may, in turn, by by-law,

Further  
delegation of  
powers

and subject to such conditions as may have been imposed by the Minister, delegate any of such authority, other than the authority to approve official plans, to a committee of council or to an appointed officer identified in the by-law either by name or position occupied and such committee or officer, as the case may be, has, in lieu of the Minister, all the powers and rights of the Minister in respect of such delegated authority and shall be responsible for all matters pertaining thereto including the referral of any matter to the Municipal Board.

Limitation

(1a) Despite subsection (1), a council may not delegate the authority to approve amendments to official plans without the prior written approval of the Minister, which approval may be subject to such further conditions as the Minister considers appropriate.

(2) Subsection 5 (2) of the said Act is amended by striking out “and the provisions of subsections 52 (2) to (9) and (15) to (22) apply with necessary modifications in the exercise of that authority” in the seventh, eighth and ninth lines.

**6.—(1)** Subsections 17 (14), (15), (16) and (17) of the said Act are repealed and the following substituted therefor:

Hearing and  
notice  
thereof

(14) On a referral to the Municipal Board, the Board shall hold a hearing, of which notice shall be given to such persons or bodies and in such manner as the Board may determine.

(2) Subsection 17 (19) of the said Act is amended by striking out “adversely” in the fourth line and in the ninth line.

**7.** Subsection 20 (1) of the said Act is repealed and the following substituted therefor:

Lodging of  
plan

(1) A certified copy of the official plan shall be lodged in the office of the clerk of each municipality to which the plan or any part of the plan applies.

**8.** Subsection 21 (2) of the said Act is amended by striking out “adversely” in the second line.

**9.** Subsection 22 (5) of the said Act is amended by striking out “adversely” in the fourth line and in the ninth line.

**10.** Subsection 23 (1) of the said Act is amended by striking out “adversely” in the third line.

**11.—(1)** Subsection 24 (2) of the said Act is repealed and the following substituted therefor:

(2) Where a council has adopted an amendment to an official plan, the council of any municipality to which the plan or any part of the plan applies may, before the Minister has approved the amendment, pass a by-law that does not conform with the official plan but will conform therewith if the amendment is approved, and the by-law shall be conclusively deemed to have conformed with the official plan on and from the day it was passed if the Minister approves the amendment to the official plan.

Validity of  
by-laws  
conforming  
with  
amendments  
to plans

**(2) Clause 24 (4) (b) of the said Act is repealed and the following substituted therefor:**

- (b) an appeal is taken and the appeal is dismissed or the by-law is amended by the Municipal Board or as directed by the Municipal Board,

. . . . .

**12. Section 28 of the said Act is amended by adding thereto the following subsection:**

(7a) Where the council of the municipality proposes to exercise any power or authority under subsection (6) or (7) that would be prohibited under subsection 112 (1) of the *Municipal Act*, the Minister may approve the exercise of such power or authority in order that the exception provided for in subsection 112 (2) of the *Municipal Act* will apply.

Approval of  
Minister

R.S.O. 1980,  
c. 302

**13.—(1) Section 33 of the said Act is amended by adding thereto the following subsection:**

(7a) Notice of any condition imposed under subsection (7) may be registered in the proper land registry office against the land to which it applies.

Registration  
of notice

**(2) Subsection 33 (10) of the said Act is repealed and the following substituted therefor:**

(10) Where a condition has been imposed under subsection (7) and the holder of the demolition permit considers that it is not possible to complete the new building within the time specified in the permit or where the holder of the permit is of the opinion that the construction of the new building has become not feasible on economic or other grounds, the permit holder may apply to the council of the municipality for relief from the conditions on which the permit was issued.

Application  
to council for  
relief from  
conditions of  
demolition  
permit

(10a) Notice of application under subsection (10) shall be sent by registered mail to the clerk of the municipality not less

Notice of  
application



than sixty days before the time specified in the permit for the completion of the new building and, where the council under subsection (11) extends the time for completion of the new building, application may similarly be made for relief by sending notice of application not less than sixty days before the expiry of the extended completion time.

Extension of  
time

(10b) Despite subsection (10a), the council may, at any time, extend the date specified in that subsection for the making of an application for relief from the conditions on which the permit was issued.

**14.—(1) Subsections 34 (12) and (13) of the said Act are repealed and the following substituted therefor:**

Information  
and public  
meeting

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (27), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons prescribed.

Time for  
meeting, etc.

(13) The meeting mentioned in subsection (12) shall be held not sooner than twenty days after the requirements for the giving of notice have been complied with and shall be open to the public, and any person who attends the meeting shall be afforded an opportunity to make representation in respect of the zoning proposal.

**(2) Subsection 34 (15) of the said Act is repealed and the following substituted therefor:**

Information  
to agencies,  
etc.

(15) The council shall forward to such boards, commissions, authorities or other agencies as the council considers may have an interest in the zoning proposal sufficient information to enable them to understand it generally and such information shall be forwarded not less than twenty days before passing a by-law implementing the proposal.

Extension of  
time for  
submission of  
comments

(15a) Where a board, commission, authority or other agency receives information under subsection (15), such board, commission, authority or agency may in writing notify the clerk of the municipality at any time before the expiry of the twenty-day period mentioned in subsection (15) that a further period of time is required to submit comments in respect of the zoning proposal and, where notice is so given, a by-law implementing the proposal may not be passed until either the comments have been received by the council or thirty days

have elapsed from the date that the information was forwarded under subsection (15), whichever first occurs.

**(3) Subsections 34 (17) and (18) of the said Act are repealed and the following substituted therefor:**

(17) Where the council passes a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (27), the clerk of the municipality shall give written notice of the passing of the by-law in the manner and in the form and to the persons and agencies prescribed and the notice shall specify the last day for filing a notice of appeal under subsection (18). Notice of passing of by-law

(18) Any person, including the Minister or agency, may, not later than the twentieth day after the day that the giving of written notice as required by subsection (17) is completed, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection. Appeal to O.M.B.

(18a) For the purposes of subsection (18), the giving of written notice shall be deemed to be completed, When giving of notice deemed completed

(a) where notice is given by publication in a newspaper, on the day that such publication occurs;

(b) where notice is given by personal service, on the day that the serving of all required notices is completed; and

(c) where notice is given by mail, on the day that the mailing of all required notices is completed.

**(4) Subsections 34 (22), (23), (24) and (25) of the said Act are repealed and the following substituted therefor:**

(22) On an appeal to the Municipal Board, the Board shall hold a hearing of which notice shall be given to such persons or bodies and in such manner as the Board may determine. Hearing and notice thereof

**(5) Subsection 34 (28) of the said Act is amended by striking out "adversely" in the third line and in the eighth line.**

**15. The said Act is amended by adding thereto the following section:**

**34a.—**(1) The authority to pass by-laws under subsections 34 (1) and 37 (1) does not include the authority to pass by-laws that distinguish between persons who are related and No authority to distinguish on basis of relationship

persons who are unrelated in respect of the occupancy of a building or structure.

Idem

(2) A provision in a by-law that distinguishes between persons who are related and persons who are unrelated in respect of the occupancy of a building or structure ceases to have effect on the day this section comes into force.

**16. Subsection 35 (2) of the said Act is repealed and the following substituted therefor:**

Condition

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the use of the holding symbol mentioned in subsection (1).

**17. Subsection 36 (2) of the said Act is repealed and the following substituted therefor:**

Condition

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.

**18. Clause 40 (8) (a) of the said Act is amended by adding thereto the following paragraph:**

4. Where the land abuts a highway under the jurisdiction of the county or regional, metropolitan or district municipality, grading or alteration in elevation or contour of the land in relation to the elevation of the highway and provision for the disposal of storm and surface water from the land.

**19. Subsection 41 (4) of the said Act is repealed and the following substituted therefor:**

Official plan  
requirement

(4) The alternative requirement authorized by subsection (3) may not be provided for in a by-law passed under this section unless there is an official plan in effect in the local municipality that contains specific policies dealing with the provision of lands for park or other public recreational purposes and the use of the alternative requirement.

**20.—(1) Subsection 44 (10) of the said Act is amended by striking out “by mail” in the second line.**

**(2) Subsection 44 (12) of the said Act is amended by striking out “serving personally on or sending by registered mail to” in**



the fourth and fifth lines and inserting in lieu thereof "filing with".

(3) Subsection 44 (13) of the said Act is amended by striking out "served or sent to him" in the second line and inserting in lieu thereof "filed".

**21.—**(1) Clause 46 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) in respect of any land in Ontario, exercise any of the powers conferred upon councils by section 34, 37 or 38, but subsections 34 (12) to (31) do not apply to the exercise of such powers; and

(2) Subsection 46 (15) of the said Act is amended by striking out "adversely" in the fourth line.

**22.** Subsection 49 (1) of the said Act is amended by striking out "section 52 to the Minister or to a council, as the case may be, includes a delegate thereof as provided for in sections 4, 5 and 53" in the twenty-ninth, thirtieth and thirty-first lines and inserting in lieu thereof "subsections 52 (1), (2), (17), (18), (19), (21) and (22) to the Minister includes a delegate of the Minister, as provided for in sections 4 and 54, and a reference herein and in section 52 to a council includes a delegate of a council, as provided for in sections 5 and 53".

**23.—**(1) Subsection 52 (7) of the said Act is amended by inserting after "sent" in the second line "either as required under subsection (5) or otherwise, including notice sent in accordance with a condition of delegation of the authority to grant consents".

(2) Subsection 52 (20) of the said Act is amended by adding at the end thereof "but where there is an appeal under subsection (7) or (8), or a referral under subsection (13) or (14), the application for consent shall not be deemed to be refused for failure to fulfil the conditions until the expiry of a period of one year from the date of the order of the Municipal Board issued in respect of the appeal or referral".

**24.** Subsection 56 (1) of the said Act is repealed and the following substituted therefor:

(1) The Minister may by order, in respect of land described in the order, provide that the contravention of section 49 or a predecessor thereof or of a by-law passed under a predecessor

Effect of  
contravention  
of s. 49, etc.

of section 49 or of an order made under clause 27 (1) (b), as it existed on the 25th day of June, 1970, of *The Planning Act*, being chapter 296 of the Revised Statutes of Ontario, 1960, or a predecessor thereof does not have and shall be deemed never to have had the effect of preventing the conveyance of or creation of any interest in such land, provided that the order does not affect the rights acquired by any person from a judgment or order of any court given or made on or before the day on which the order is made by the Minister.

**25. Subsections 68 (1) and (2) of the said Act are repealed and the following substituted therefor:**

Tariff of fees      (1) The council of a municipality, by by-law, and a planning board, by resolution, may prescribe a tariff of fees for the processing of applications made in respect of planning matters, which tariff shall be designed to meet only the anticipated cost to the municipality or to a committee of adjustment or land division committee constituted by the council of the municipality or to the planning board in respect of the processing of each type of application provided for in the tariff.

Reduction or  
waiver of  
fees      (2) Notwithstanding that a tariff of fees is prescribed under subsection (1), the council of a municipality, a planning board, a committee of adjustment or a land division committee in processing an application may reduce the amount of or waive the requirement for the payment of a fee in respect of the application where the council, planning board or committee is satisfied that it would be unreasonable to require payment in accordance with the tariff.

**26. Clause 69 (d) of the said Act is repealed.**

Commence-  
ment

**27.—(1) This Act, except sections 3 and 4, subsection 5 (2) and section 14, comes into force on the day it receives Royal Assent.**

Idem

(2) Section 3 shall be deemed to have come into force on the 1st day of August, 1983 but subsection 3 (6) of the *Planning Act, 1983*, as enacted by section 3 of this Act, does not apply so as to affect the rights acquired by any person from a judgment or order of any court given or made on or before the 4th day of May, 1988.

(3) Section 4, subsection 5 (2) and section 14 come into force <sup>Idem</sup> on a day to be named by proclamation of the Lieutenant Governor.

**28.** The short title of this Act is the *Planning Amendment* <sup>Short title</sup> *Act, 1989.*





## CHAPTER 6

### **An Act to repeal certain Private Acts related to Municipalities**

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Acts listed in the Schedule hereto are hereby Repeal  
repealed.
2. A municipality incorporated by an Act listed in the Status not  
affected  
Schedule and that was in existence immediately prior to the coming into force of this Act shall be deemed to be continued with the same status as it had immediately prior to the coming into force of this Act.
3. Nothing in this Act affects the boundaries of any municipality as those boundaries existed immediately prior to the coming into force of this Act. Boundaries  
not affected
4. This Act comes into force on the day it receives Royal Commence-  
ment  
Assent.
5. The short title of this Act is the *Municipal Private Acts* Short title  
*Repeal Act, 1989*.

## SCHEDULE

## ACTS REPEALED

Municipality	Year and Chapter
ALFRED, Township.....	1926, c. 74; 1959, c. 109
BLOOMFIELD, Village.....	1923, c. 58
CHATHAM AND NORTH	
GORE, Township.....	1907, c. 92
CHELMSFORD, Town.....	1940, c. 39; 1956, c. 101, c. 102
CHESLEY, Town.....	1911, c. 86; 1959, c. 113
COLEMAN, Township.....	1910, c. 112
DRYDEN, Town.....	1912, c. 93
DUNNVILLE, Town.....	1900, c. 66; 1913, c. 95; 1914, c. 68; 1920, c. 118; 1927, c. 106
EAST WINDSOR, City.....	1930, c. 74; 1931, c. 92; 1932, c. 98
ERAMOSA, Township.....	1962-63, c. 160
ESSEX, County.....	1924, c. 94
EXETER, Town.....	1893, c. 62; 1978, c. 117
FORD CITY, Town.....	1924, c. 96
GALT, Town.....	1889, c. 60
GRANTHAM, Township.....	1926, c. 83; 1957, c. 137
HALLOWELL, Township.....	1923, c. 58
HASTINGS, County.....	1868, c. 46
HEARST, Town.....	1961-62, c. 153
HUMBERSTONE, Township.....	1908, c. 85; 1912, c. 102
KINGSTON, Township.....	1949, c. 128; 1960, c. 148
LAMBTON, County.....	1875-76, c. 60; 1906, c. 131
LANARK, County.....	1903, c. 60; 1913, c. 101
LAXTON, DIGBY AND	
LONGFORD, Townships.....	1889, c. 64
MATCHEDASH, Township.....	1910, c. 151
McGILLIVRAY, Township.....	1870-71, c. 65
METHUEN, Township.....	1946, c. 101
MIDLAND, Town.....	1898, c. 47; 1899, c. 61; 1901, c. 60; 1903, c. 65, c. 66; 1905, c. 58; 1908, c. 94; 1909, c. 112; 1913, c. 105; 1914, c. 75; 1917, c. 76; 1921, c. 110; 1923, c. 73
MILTON, Town.....	1891, c. 74; 1900, c. 78; 1912, c. 108
NEW LISKEARD, Town.....	1911, c. 96; 1930, c. 87
NORTHUMBERLAND AND	
DURHAM, Counties.....	1875-76, c. 54; 1905, c. 62; 1906, c. 84; 1908, c. 100; 1962-63, c. 176
OIL SPRINGS, Village.....	1895, c. 71
ORANGEVILLE, Town.....	1886, c. 61; 1894, c. 74; 1914, c. 80; 1919, c. 99; 1920, c. 130
ORILLIA, City.....	1871-72, c. 66



OTTAWA, City .....	1889, c. 67; 1890, c. 96, c. 97; 1891, c. 77; 1893, c. 74, c. 75, c. 76; 1896, c. 87; 1897, c. 72; 1899, c. 66; 1900, c. 80, c. 81, c. 82, c. 83; 1901, c. 62; 1905, c. 65; 1906, c. 87; 1907, c. 79; 1912, c. 114; 1914, c. 82, c. 83; 1917, c. 79; 1918, c. 72; 1919, c. 102; 1921, c. 115; 1922, c. 123; 1923, c. 77; 1925, c. 98; 1926, c. 89; 1927, c. 119, c. 120; 1928, c. 74; 1931, c. 116; 1932, c. 81; 1933, c. 90; 1934, c. 89; 1935, c. 91; 1936, c. 78; 1937, c. 96; 1946, c. 133; 1948, c. 117; 1953, c. 122; 1954, c. 120; 1956, c. 112; 1961-62, c. 160
PEEL, County .....	1941, c. 69
PEMBROKE, Town .....	1913, c. 112; 1914, c. 86; 1921, c. 116; 1924, c. 115; 1957, c. 151
PENETANGUISHENE, Town .....	1897, c. 73; 1910, c. 122; 1917, c. 82; 1923, c. 78; 1931, c. 117
PETROLIA, Town .....	1899, c. 72; 1901, c. 64; 1903, c. 75; 1905, c. 68; 1906, c. 89; 1917, c. 84; 1923, c. 79; 1943, c. 45
PORT COLBORNE, City .....	1907, c. 84; 1913, c. 116; 1921, c. 120; 1923, c. 82; 1953, c. 127
PORT McNICOLL, Village .....	1919, c. 108
PUSLINCH, Township .....	1974, c. 167
RALEIGH AND HARWICH, Townships .....	1960, c. 164
RICHMOND HILL, Town .....	1931, c. 114; 1960-61, c. 131
RIVERSIDE, Town .....	1928, c. 77; 1931, c. 120; 1932, c. 85; 1948, c. 121; 1955, c. 110
SANDWICH, Town .....	1913, c. 120; 1916, c. 90; 1918, c. 78; 1924, c. 121; 1927, c. 124; 1928, c. 78, c. 79; 1929, c. 119; 1930, c. 95; 1931, c. 122; 1933, c. 72, c. 97
SANDWICH EAST, Town .....	1928, c. 80
SANDWICH SOUTH, Township ..	1920, c. 139
SANDWICH WEST, Township ....	1920, c. 140
SARNIA, City .....	1915, c. 70; 1916, c. 91; 1926, c. 92; 1927, c. 126; 1929, c. 120; 1930, c. 97; 1932, c. 88; 1937, c. 101; 1947, c. 139; 1972, c. 191
SAULT STE. MARIE, City .....	1877, c. 32; 1890, c. 135; 1894, c. 80; 1895, c. 119; 1903, c. 81; 1907, c. 89; 1908, c. 108; 1909, c. 121; 1912, c. 122; 1914, c. 94, c. 95; 1915, c. 71; 1916, c. 92; 1918, c. 80; 1919, c. 105; 1920, c. 137; 1921, c. 123; 1922, c. 126; 1923, c. 87; 1924, c. 122; 1925, c. 104; 1926, c. 93; 1930, c. 98; 1958, c. 152; 1959, c. 133
ST. CATHARINES, City .....	1880, c. 45; 1895, c. 78, c. 79; 1900, c. 93; 1901, c. 98; 1905, c. 71, c. 72, c. 73, c. 74; 1906, c. 94; 1907, c. 86; 1909, c. 119; 1910, c. 126, c. 127, c. 128; 1911, c. 110, c. 111; 1915, c. 69; 1916, c. 89; 1917, c. 89; 1919, c. 104; 1920, c. 136; 1922, c. 128; 1923, c. 85; 1924, c. 118; 1932, c. 87
TECK, Township .....	1927, c. 128; 1958, c. 158
THOROLD, Township .....	1927, c. 130; 1946, c. 140

TILBURY EAST, Township .....	1893, c. 83; 1905, c. 81; 1912, c. 125
TILBURY, Town .....	1890, c. 103; 1931, c. 129
WALKERVILLE, Town .....	1916, c. 97; 1919, c. 112, c. 113; 1920, c. 146; 1925, c. 114; 1926, c. 103; 1928, c. 90; 1930, c. 107; 1932, c. 98; 1933, c. 107; 1934, c. 100
WASAGA BEACH, Village .....	1971, c. 132
WATERLOO, City .....	1914, c. 104; 1917, c. 96; 1939, c. 77; 1958, c. 163; 1962-63, c. 196; 1972, c. 203
WELLAND, County .....	1968, c. 182; 1968-69, c. 170
WELLAND, City .....	1918, c. 56; 1953, c. 134
WEST LORNE, Police Village .....	1906, c. 104
WESTPORT, Village .....	1906, c. 68
WINCHESTER, Village .....	1899, c. 89
WINDSOR, City .....	1897, c. 83; 1900, c. 108; 1901, c. 99; 1904, c. 74; 1905, c. 111; 1907, c. 97; 1908, c. 120; 1910, c. 136; 1914, c. 110, c. 112; 1920, c. 147, c. 148; 1921, c. 127; 1923, c. 97; 1925, c. 117; 1928, c. 93; 1929, c. 126; 1932, c. 95; 1935, c. 98; 1951, c. 120; 1962-63, c. 197
WINGHAM, Town .....	1888, c. 64; 1896, c. 100; 1915, c. 79; 1928, c. 94

## CHAPTER 7

### An Act to amend the Road Access Act

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 1 of the *Road Access Act*, being chapter 457 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

(ca) “maintain” includes the leaving of a barrier or other obstacle on an access road or common road.

**2.—(1)** Subsection 2 (1) of the said Act is amended by striking out “or place” in the first line and inserting in lieu thereof “place or maintain”.

**(2)** Subsection 2 (2) of the said Act is amended by striking out “or place” in the first line and inserting in lieu thereof “place or maintain”.

**3.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**4.** The short title of this Act is the *Road Access Amendment Act, 1989*. Short title





## CHAPTER 8

### **An Act to amend the District Municipality of Muskoka Act**

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 51 of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1983, chapter 5, section 12, is repealed and the following substituted therefor:

**51.—(1)** In this section, “District Plan” means the official plan of the District Area. Interpretation

(2) Amendments numbered 41, 55, 56 and 63 to the District Plan are hereby removed from the District Plan and together with amendments numbered 27 and 47 to the District Plan, as they apply to the Town of Bracebridge, become the official plan of the Town of Bracebridge. Official plan,  
Town of  
Bracebridge

(3) Amendment numbered 15 to the District Plan is hereby removed from the District Plan and together with amendments numbered 27 and 47 to the District Plan, as they apply to the Township of Georgian Bay, become the official plan of the Township of Georgian Bay. Official plan,  
Township of  
Georgian  
Bay

(4) Amendment numbered 13, as approved, and amendments numbered 8, 36, 54, 60 and 67 to the District Plan are hereby removed from the District Plan and together with amendments numbered 27 and 47 to the District Plan, as they apply to the Town of Gravenhurst, become the official plan of the Town of Gravenhurst. Official plan,  
Town of  
Gravenhurst

(5) Amendment numbered 58, as approved, and amendments numbered 1, 14, 23, 26, 39, 45 and 66 to the District Plan are hereby removed from the District Plan and become the official plan of the Town of Huntsville. Official plan,  
Town of  
Huntsville

Official plan,  
Township of  
Lake of Bays

(6) Amendments numbered 3, 11, 20, 23 and 28 to the District Plan are hereby removed from the District Plan and together with amendments numbered 27 and 47 to the District Plan, as they apply to the Township of Lake of Bays, become the official plan of the Township of Lake of Bays.

Official plan,  
Township of  
Muskoka  
Lakes

(7) Amendments numbered 2, 12, 19 and 40 to the District Plan are hereby removed from the District Plan and together with amendments numbered 27 and 47 to the District Plan as they apply to the Township of Muskoka Lakes, become the official plan of the Township of Muskoka Lakes.

District Plan

(8) Amendments numbered 27 and 47 to the District Plan continue to form part of the District Plan while also becoming part of the official plans of each of the area municipalities as provided for in subsections (2), (3), (4), (6) and (7).

Processing of  
District Plan  
amendments

(9) Where an amendment to the District Plan has been submitted to the Minister for approval and the amendment or a part thereof is not approved before the coming into force of this section, the Minister or the Municipal Board, on a referral thereto, may, without any further requirement, continue to deal with the amendment or the part thereof under the *Planning Act, 1983* and in so doing, may allocate the amendment or the part thereof to form part of such official plan as is considered appropriate.

1983, c. 1

Commence-  
ment

**2. This Act comes into force on the day it receives Royal Assent.**

Short title

**3. The short title of this Act is the *District Municipality of Muskoka Amendment Act, 1989*.**



## CHAPTER 9

### **An Act to provide for the Allocation of certain Payments or Grants in lieu of Taxes made by Canada to Municipalities in respect of Lands that are Exempt from Taxation**

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

#### **1. In this Act,**

Definitions

“board” means a board as defined in paragraph 3 of subsection 1 (1) of the *Education Act*, other than a board established under section 70 of the *Education Act*, or The Metropolitan Toronto French-language School Council and The Ottawa-Carleton French-language School Board but includes the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board;

R.S.O. 1980,  
c. 129

“commercial assessment” means, according to the last returned assessment roll,

- (a) the assessment of real property that is used as the basis for computing business assessment including the assessment for real property that is rented and occupied or used by the Crown in right of Canada or a province or territory of Canada, or a board, agency or commission thereof, or a municipal corporation or a local board thereof,
- (b) business assessment, and
- (c) the assessment for mineral lands, pipe lines and railway lands, other than railway lands actually in use for residential and farming purposes;

“defence property” means the prescribed lands and premises of defence establishments belonging to Canada;

R.S.O. 1980,  
c. 129

“French-language instructional unit” and “French-speaking person” have the same meaning as in section 257a of the *Education Act*;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act;

“residential and farm assessment”, according to the last returned assessment roll, means the assessment for real property, except for the assessment for real property referred to in clauses (a) and (c) of the definition “commercial assessment”;

“weighted assessment”, in respect of a prescribed municipality for a year, means the sum of,

- (a) the residential and farm assessment of the prescribed municipality used for taxation in that year, and
- (b) an amount of assessment that is equal to the quotient obtained by dividing the commercial assessment for that year by 0.85,

determined for elementary school purposes or secondary school purposes, or both, as the case requires.

Allocation to  
boards

**2.—(1)** A prescribed municipality that receives in a year, or that is entitled to receive in a year, a payment or grant in lieu of taxes from Canada in respect of defence property for school purposes shall allocate to the boards that have jurisdiction in the municipality that portion of the payment or grant that is prescribed.

Proportion of  
allocation

**(2)** The portion of the amount of the payment or grant in lieu of taxes referred to in subsection (1) received or receivable by the prescribed municipality shall be allocated to the boards that have jurisdiction in the municipality in the ratio that the weighted assessment supporting each board in the municipality bears to the total of the weighted assessment supporting the boards in the municipality.

Adjustment  
of allocation

**(3)** An amount that is allocated to a board under this section shall be deducted from,

- (a) the requisition of the board that makes an apportionment to the prescribed municipality by means of a requisition; or

- (b) the requisition submitted by a metropolitan corporation for the school purposes of a board of education having jurisdiction in the prescribed municipality,

and the net amount of the requisition shall be the amount included in the levy for the purposes of section 158 of the *Municipal Act*.

R.S.O. 1980,  
c. 302

(4) An amount that is allocated to a board under this section shall be used to adjust the mill rate required to be levied for school purposes by the prescribed municipality by a board that makes an apportionment by such means and the rate as adjusted to reflect the allocation to that board, despite subsection 133 (1) of the *Education Act*, shall be the rate levied for school purposes for that board in the prescribed municipality.

Idem

R.S.O. 1980,  
c. 129

(5) An allocation under this section shall be made for elementary school purposes or for secondary school purposes or for both elementary school purposes and secondary school purposes as may be prescribed and shall be deemed to be revenue of the board from taxes levied for such school purposes.

Allocation  
for  
elementary  
or secondary  
purposes

**3.—(1)** Despite section 44 of the *Education Act*, a person who resides with his or her parent or guardian on defence property in a prescribed municipality that makes an allocation under section 2 is entitled to attend an elementary school or a secondary school, as the case requires, in accordance with this section without payment of a fee.

Application  
of  
R.S.O. 1980,  
c. 129, s. 44

(2) A person who resides with his or her parent or guardian on defence property in a prescribed municipality,

Entitlement

- (a) whose parent or guardian is a Roman Catholic within the meaning of the *Education Act*, is entitled to attend a school operated by a board of education or a separate school board that has jurisdiction in the prescribed municipality;
- (b) whose parent or guardian is a French-speaking person, is entitled to attend a French-language instructional unit that is operated or provided by a board that has jurisdiction in the prescribed municipality;
- (c) where the prescribed municipality is an area municipality in The Municipality of Metropolitan Toronto, is entitled to attend a school that is operated by a board of education that has jurisdiction in The Municipality of Metropolitan Toronto and if the



parent or guardian is a French-speaking person is entitled to attend a school operated by The Metropolitan Toronto French-language School Council; and

- (d) in all cases, other than those referred to in clauses (a), (b) and (c), is entitled to attend a school that is operated by a board of education that has jurisdiction in the prescribed municipality.

Municipality  
to reimburse  
Canada

**4.** Each municipality that received a payment or grant in lieu of taxes in respect of defence property for school purposes for the years 1986 and 1987 shall, on or before the 1st day of June, 1989, reimburse Canada in an amount that is equal to the lesser of,

- (a) the amount of the payment or grant in lieu of taxes attributable to the defence property for school purposes in respect of the years 1986 and 1987; or
- (b) the sum determined by the Minister of Education of the tuition fees and transportation costs paid in respect of the years 1986 and 1987 by a Canadian Forces Base board of education established under section 70 of the *Education Act* to the boards having jurisdiction in the municipality.

R.S.O. 1980,  
c. 129

Regulations

**5.—(1)** The Lieutenant Governor in Council may make regulations,

- (a) respecting any matter that is referred to as prescribed by the regulations;
- (b) prescribing the portion of the amount of a payment or grant in lieu of taxes received in respect of defence property for school purposes that is to be allocated by prescribed municipalities to boards under this Act.

Retroactive

(2) A regulation is, if it so provides, effective with respect to a period before it is filed but not before the 1st day of January, 1988.

Commence-  
ment

**6.** This Act shall be deemed to have come into force on the 1st day of January, 1988.

Short title

**7.** The short title of this Act is the *Municipal and School Board Payments Adjustment Act, 1989*.

## CHAPTER 10

### An Act to amend the Juries Act

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—**(1) Paragraph 7 of subsection 3 (1) of the *Juries Act*, being chapter 226 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

7. Any person of the opposite sex to whom a person mentioned in paragraph 3, 4 or 6 is married or with whom that person is living in a conjugal relationship outside marriage.

**(2)** Section 3 of the said Act is amended by adding thereto the following subsection:

(1a) A person who claims to be ineligible under paragraph 7 of subsection (1) because of living in a conjugal relationship outside marriage must file with that claim a joint declaration of spousal status.

Declaration  
of unmarried  
spouses

**2.** Subsections 21 (1) and (2) of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64, are repealed.

**3.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**4.** The short title of this Act is the *Juries Amendment Act, 1989*.

Short title





## CHAPTER 11

### **An Act to amend the Municipal Act and certain other Acts related to Municipalities**

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 81 (1) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by striking out “and such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the seventh, eighth and ninth lines.

**2.** Section 112a of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 24, section 1, is amended by adding thereto the following subsections:

(4a) The power to make grants under clause (4) (b) includes the power to make loans, to charge interest on the loans and to guarantee loans. Grant includes loans

(4b) A guarantee of loan made under this section shall be deemed to be a debt for the purposes of section 149 and, where the term of the loan in respect of which the guarantee is made extends beyond the current year, the guarantee shall be deemed to be an act to which section 64 of the *Ontario Municipal Board Act* applies. Guarantee deemed to be debt

R.S.O. 1980,  
c. 347

**3.** Clause 149 (2) (v) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 31, section 4, is amended by striking out “and 50” in the fourth line and inserting in lieu thereof “50 and 50a”.

**4.** Subsection 180 (2) of the said Act is amended by striking out “ratepayers assessed as owners and resident in the municipality” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

**5.—(1)** Subsection 196 (11) of the said Act is amended by striking out “subsections (16) and (17)” in the second line and inserting in lieu thereof “subsection (18)”.

(2) Subsection 196 (18) of the said Act is amended by striking out “(13), (14) and (15)” in the eighth line and inserting in lieu thereof “(16) and (17)”.

**6.** Paragraph 28 of section 208 of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the third line and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

**7.—(1)** Paragraph 18 of section 210 of the said Act is amended by adding thereto the following clause:

- (a) A by-law passed under this paragraph may,
  - (i) apply to the whole municipality or to any defined areas thereof, and
  - (ii) prescribe different standards for the height and description of lawful fences in different defined areas of the municipality.

**(2)** Paragraph 21 of the said section 210 is repealed and the following substituted therefor:

Barbed wire  
fences

21. For requiring proper and sufficient protection against injury to persons or animals by fences constructed wholly or partly of barbed wire or other barbed material and for prohibiting or regulating the erection of fences made wholly or partly of barbed wire or other barbed material.

- (a) A by-law passed under this paragraph may be made applicable to the whole municipality or to any defined areas thereof.

**(3)** Paragraph 29 of the said section 210 is repealed and the following substituted therefor:

Discharge of  
fire-arms

29. For the purpose of public safety, for prohibiting or regulating the discharge of guns or other fire-arms, air-guns, spring-guns, cross-bows, long-bows or any class or type thereof in the municipality or in any defined areas thereof.

**(4)** Paragraph 30 of the said section 210, as amended by the Statutes of Ontario, 1986, chapter 64, section 37, is repealed and the following substituted therefor:

30. For regulating the sale of fireworks or any class thereof and for prohibiting the sale of fireworks or any class thereof on any days during the year specified in the by-law.

Sale of  
fireworks

(5) Paragraph 121 of the said section 210 is amended by striking out “except privately-owned parking lots where a fee is charged for the privilege of parking vehicles” in the fourth, fifth and sixth lines.

**8. The said Act is amended by adding thereto the following section:**

**225b.**—(1) In this section, “municipality” includes a metropolitan, regional or district municipality or the County of Oxford.

Interpretation

(2) By-laws may be passed by the councils of municipalities for participating in programs which allow such participation and which are established and administered by a ministry of the Crown in right of Ontario.

Participation  
in provincial  
programs

(3) The council of a municipality may enter into agreements with a minister of the Crown in right of Ontario to provide for the financing and operation of a program under subsection (2).

Agreements

**9. Clause 313 (4) (e) of the said Act is amended by striking out “trees” in the third line and inserting in lieu thereof “land to which the tree is appurtenant”.**

**10.—(1) Subsection 368b (2) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is repealed and the following substituted therefor:**

(2) If the Minister of Revenue considers that within a county, or within any class or classes of real property within a county, any parcel or parcels of real property are assessed inequitably with respect to the assessment of any other parcel or parcels of real property in the county, or of real property of that class, as the case may be, the Minister of Revenue may direct that such changes be made in the assessment to be contained in the assessment roll next to be returned for each local municipality as will, in the Minister of Revenue’s opinion,

County wide  
assessment  
update

- (a) eliminate or reduce inequalities in the assessment of real property in the county and, for that purpose, the Minister of Revenue may name a day that the assessment commissioner in whose region the county is situated shall return a new assessment roll



for the assessment at market value of real property in all municipalities in the county; or

- (b) where the assessment is in respect of a parcel or parcels of real property within any class or classes of real property within a county, eliminate or reduce inequalities in the assessment of any class or classes of real property and, for that purpose, the Minister of Revenue may make regulations,
  - (i) prescribing the classes of real property into which all the real property in the county shall be divided,
  - (ii) prescribing standards and procedures to be used for the purpose of equalizing and making equitable the assessments of all real property belonging to the same class throughout the county,
  - (iii) providing that any equalization of assessment pursuant to a regulation made under sub-clause (ii) shall not alter, as between classes of real property throughout the county, the relative level of assessment at market value previously existing among such classes, or providing that the equalization shall alter such levels of assessment at market value no more than is reasonably necessary to provide equity of assessment within each class.

When  
direction  
effective

(2a) A direction to which clause (2) (a) applies is effective upon publication of a notice of the direction in *The Ontario Gazette*.

Deemed  
direction,  
County of  
Huron  
R.S.O. 1980,  
c. 31

(2b) The proclamation by the Lieutenant Governor in Council under section 70 of the *Assessment Act* for the assessment at market value of real property in all municipalities in the County of Huron for the 1988 taxation year shall be deemed to be a direction of the Minister of Revenue to which clause (2) (a) applies for the purposes of the 1988 and subsequent taxation years and no notice under subsection (2a) is required.

(2) Section 368b of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is amended by adding thereto the following subsection:



(3a) A direction under subsection (2) does not apply to a city, separated town or separated township which has not requested that the direction be made unless,

Direction upon request

- (a) a direction has been made by the Minister of Revenue under subsection (7); and
- (b) the city, separated town or separated township had requested a direction under subsection (2) before the direction was made under subsection (7).

**(3) Subsection 368b (13) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is repealed and the following substituted therefor:**

(13) For purposes of subsection 24 (16) of the *Assessment Act*, changes made in the assessment roll of a local municipality under a direction of the Minister of Revenue to which clause (2) (a) applies shall be deemed to be an assessment update of all property within that local municipality under section 70 of the *Assessment Act*.

Taxation of pipe lines  
R.S.O. 1980,  
c. 31

(13a) For purposes of subsection 24 (16a) of the *Assessment Act*, changes made in the assessment roll of a local municipality under a direction of the Minister of Revenue to which clause (2) (b) applies shall be deemed to be an assessment update of all property within that local municipality under subsection 63 (3) of the *Assessment Act*.

Idem

**(4) Subsection 368b (15) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is repealed and the following substituted therefor:**

(15) A direction to which clause (2) (a) applies or a regulation made under clause (2) (b) may be made retroactive to the 1st day of December of the year preceding the year in which it was made.

Retroactive direction or regulation

**11. Subsection 368c (1) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is repealed and the following substituted therefor:**

(1) Sections 368d to 368l apply where a different assessment of lands in a local municipality in the county has been instituted pursuant to a direction of the Minister of Revenue under subsection 368b (2).

Different assessment generally throughout the county

**12.—(1) Subsection 19 (1) of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other**

person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth, ninth and tenth lines.

(2) Subsection 113 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Section 123 of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the sixth and seventh lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

**13.—**(1) Subsection 21 (1) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth, ninth and tenth lines.

(2) Subsection 253 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

**14.—**(1) Subsection 22 (1) of the *County of Oxford Act*, being chapter 365 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth and ninth lines.

(2) Subsection 122 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Subsection 136 (2) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second and third lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

**15.—**(1) Subsection 21 (1) of the *Regional Municipality of Durham Act*, being chapter 434 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth, ninth and tenth lines.

(2) Subsection 134 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Subsection 152 (2) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second and third lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

(4) Subsection 153 (7) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second line and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

16.—(1) Subsection 21 (1) of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth, ninth and tenth lines.

(2) Subsection 117 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Subsection 132 (2) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second and third lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

(4) Subsection 133 (4) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the fourth line and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

17.—(1) Subsection 21 (1) of the *Regional Municipality of Halton Act*, being chapter 436 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth, ninth and tenth lines.

(2) Subsection 127 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.



(3) Subsection 141 (2) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second and third lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

**18.**—(1) Subsection 20 (1) of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth, ninth and tenth lines.

(2) Subsection 139 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Subsection 154 (2) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second and third lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

**19.**—(1) Subsection 20 (1) of the *Regional Municipality of Niagara Act*, being chapter 438 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the ninth, tenth and eleventh lines.

(2) Subsection 166 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Subsection 180 (2) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second and third lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

(4) Subsection 181 (2) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second and third lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

(5) Subsection 182 (2) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second and third lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

**20.**—(1) Subsection 24 (1) of the *Regional Municipality of Ottawa-Carleton Act*, being chapter 439 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth, ninth and tenth lines.

(2) Subsection 169 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

**21.**—(1) Subsection 21 (1) of the *Regional Municipality of Peel Act*, being chapter 440 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth and ninth lines.

(2) Subsection 122 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Subsection 136 (2) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second and third lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

**22.**—(1) Subsection 20 (1) of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the eighth, ninth and tenth lines.

(2) Subsection 109 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Subsection 122 (1) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the sixth and seventh lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

**23.**—(1) Subsection 20 (1) of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the

issue thereof is authorized” in the eighth, ninth and tenth lines.

(2) Subsection 157 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Section 172 of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the sixth and seventh lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

**24.**—(1) Subsection 20 (1) of the *Regional Municipality of York Act*, being chapter 443 of the Revised Statutes of Ontario, 1980, is amended by striking out “and any such other person before signing a cheque shall satisfy himself that the issue thereof is authorized” in the ninth and tenth lines.

(2) Subsection 158 (2) of the said Act is amended by striking out “ratepayers of an area municipality assessed as owners and resident therein” in the fourth and fifth lines and inserting in lieu thereof “electors of the municipality”.

(3) Section 172 of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the sixth and seventh lines and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

(4) Subsection 173 (8) of the said Act is amended by striking out “*Ministry of Culture and Recreation Act*” in the second line and inserting in lieu thereof “*Ministry of Tourism and Recreation Act, 1982*”.

Commence-  
ment

**25.** This Act comes into force on the day it receives Royal Assent.

Short title

**26.** The short title of this Act is the *Municipal Statute Law Amendment Act, 1989*.



## CHAPTER 12

**An Act to amend the  
Regional Municipality of Sudbury Act**

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Subsection 74 (5) of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is repealed.

(2) Subsection 74 (7) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by striking out “subsections (5) and (6)” in the first line and inserting in lieu thereof “subsection (6)”.

**2.** This Act shall be deemed to have come into force on the 1st day of January, 1988. Commence-  
ment

**3.** The short title of this Act is the *Regional Municipality of Sudbury Amendment Act, 1989*. Short title



## CHAPTER 13

### **An Act to amend The Ryerson Polytechnical Institute Act, 1977**

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Clause 10 (h) of *The Ryerson Polytechnical Institute Act, 1977*, being chapter 47, is repealed and the following substituted therefor:

- (h) to grant bachelor of applied arts, bachelor of technology, bachelor of business management and such other baccalaureate degrees as may be prescribed by the regulations made under this Act; and

. . . . .

**2.** The said Act is amended by adding thereto the following section:

**17a.** The Lieutenant Governor in Council may make regulations prescribing degrees that may be granted by the Academic Council. Regulations

**3.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**4.** The short title of this Act is the *Ryerson Polytechnical Institute Amendment Act, 1989*. Short title





## CHAPTER 14

### **An Act to amend certain Acts as they relate to the Law Society**

*Assented to February 27th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** Clause 28 (b) of the *Law Society Act*, being chapter 233 of the Revised Statutes of Ontario, 1980, is amended by striking out “other British subjects” in the first and second lines and inserting in lieu thereof “permanent residents of Canada”.

(2) Clause 28 (c) of the said Act is amended by striking out “other British subjects” in the first and second lines and inserting in lieu thereof “permanent residents of Canada”.

(3) Subsection 32 (1) of the said Act is amended by striking out “other British subject” in the second line and inserting in lieu thereof “a permanent resident of Canada”.

(4) Subsection 32 (2) of the said Act is repealed and the following substituted therefor:

(2) Any member who is not a Canadian citizen or a permanent resident of Canada on the 1st day of July, 1989 ceases to be a member on that day.

Transition re  
British  
subjects

(3) Any person whose membership is terminated under subsection (1) or (2) may, upon becoming a Canadian citizen or a permanent resident of Canada, make application for readmission as a member and Convocation may readmit the person.

Readmission

**2.** Subsections 25 (2), (3), (4) and (5) of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64, are repealed.

Commence-  
ment

**3.—(1)** This Act, except section 1, comes into force on the day it receives Royal Assent.

## Idem

**(2)** Section 1 comes into force on the 1st day of July, 1989.

## Short title

**4.** The short title of this Act is the *Law Society Amendment Act, 1989*.



## CHAPTER 15

### An Act to amend the Retail Sales Tax Act

*Assented to March 2nd, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** Clause (b) of paragraph 4 of section 1 of the *Retail Sales Tax Act*, being chapter 454 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (b) the cost of, or charges for, customs, mailing, handling, delivery or transportation, whether or not such are shown separately in the books of the vendor or on any invoices or in the computation of the sale price, or whether or not title has passed to the purchaser before delivery to such purchaser.

**(2)** Paragraph 4 of the said section 1 is amended by adding thereto the following clause:

- (ba) the tax imposed pursuant to any provision of the *Excise Tax Act* (Canada) in respect of the tangible personal property or the taxable service or the sale or acquisition of either of them.

R.S.C. 1985,  
c. E-15

**(3)** Clause (c) of paragraph 27 of the said section 1 is repealed and the following substituted therefor:

- (c) owns or operates a place of amusement.

**2.—(1)** Subsection 2 (1) of the said Act is amended by striking out “7” in the fifth line and inserting in lieu thereof “8”.

**(2)** Subsection 2 (3) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 36, section 2 and 1986, chapter 66, section 2, is further amended by striking out “7” in the third line and inserting in lieu thereof “8”.

(3) Subsection 2 (6) of the said Act is amended by striking out “of the consideration given in payment” in the twelfth and thirteenth lines and in the seventeenth and eighteenth lines.

(4) Section 2 of the said Act is amended by adding thereto the following subsection:

Effective  
date

(6a) For the purposes of subsection (6), tax at the rate of 8 per cent shall be computed, paid and collected on the due date of any payment to be made on or after the 2nd day of May, 1988.

**3.—**(1) Subsection 3 (1) of the said Act is amended by inserting after “service or” in the second line “own or”.

(2) Subsection 3 (6) of the said Act is repealed and the following substituted therefor:

Offence and  
penalty

(6) Every vendor who fails to comply with subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$100 for each day or part of a day on which the offence occurs or continues.

**4.—**(1) Paragraph 54 of subsection 5 (1) of the said Act is repealed and the following substituted therefor:

54. newspapers, however purchased, but not advertising inserts or supplements to be included in newspapers.

(2) Paragraph 76 of the said subsection 5 (1), as enacted by the Statutes of Ontario, 1983, chapter 27, section 4 and amended by 1983, chapter 81, section 1, is repealed.

(3) Paragraph 77 of the said subsection 5 (1), as enacted by the Statutes of Ontario, 1983, chapter 27, section 4 and amended by 1983, chapter 48, section 1 and 1983, chapter 81, section 1, is repealed.

**5.—**(1) Subsection 14 (1) of the said Act is amended by inserting after “resale” in the fourth line “which records clearly identify the persons to whom sales for resale are made”.

(2) Subsection 14 (3) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 66, section 7, is amended by inserting after “vendor who” in the first line “owns or”.

**(3)** Section 14 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 66, section 7, is further amended by adding thereto the following subsection:

**(4)** Where any person whose records fail to clearly identify the persons to whom sales for resale are made, the sales of tangible personal property disclosed in the records shall be deemed to have been retail sales. Deemed  
retail sales

**6.** Subsection 16 (2) of the said Act is amended by inserting after "purchaser" in the sixth line and in the tenth line in each instance "or the penalty imposed by subsection 17 (3)".

**7.** Clause 17 (5) (b) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 27, section 8, is further amended by striking out "\$2,000" in the amendment of 1983 and inserting in lieu thereof "\$2,500".

**8.** This Act shall be deemed to have come into force on the 2nd day of May, 1988. Commence-  
ment

**9.** The short title of this Act is the *Retail Sales Tax Amendment Act, 1989*. Short title





## CHAPTER 16

### An Act to revise the Personal Property Security Act and to repeal and amend certain other Acts related to Personal Property

*Assented to March 2nd, 1989*

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## Definitions

**1.—(1) In this Act,**

“accessions” means goods that are installed in or affixed to other goods;

“account” means any monetary obligation not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance;

“chattel paper” means one or more than one writing that evidences both a monetary obligation and a security interest in or a lease of specific goods;

“collateral” means personal property that is subject to a security interest;

“consumer goods” means goods that are used or acquired for use primarily for personal, family or household purposes;

“debtor” means a person who owes payment or other performance of the obligation secured, whether or not the person owns or has rights in the collateral, and includes,

- (a) an assignor of an account or chattel paper, and
- (b) a transferee of or successor to a debtor’s interest in collateral;

“default” means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;

“document of title” means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee’s possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

“equipment” means goods that are not inventory or consumer goods;

“financing change statement” means a document in the form prescribed for a financing change statement;

“financing statement” means a document in the form prescribed for a financing statement;

“future advance” means the advance of money, credit or other value secured by a security agreement whether or not such advance is given pursuant to commitment;

“goods” means tangible personal property other than chattel paper, documents of title, instruments, money and securities, and includes fixtures, growing crops, the unborn young of animals, timber to be cut, and minerals and hydrocarbons to be extracted;

“instrument” means,

- (a) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada) or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or

R.S.C. 1985,  
c. B-4



- (b) a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder,

but does not include a writing that constitutes part of chattel paper, a document of title or a security;

“intangible” means all personal property, including choses in action, that is not goods, chattel paper, documents of title, instruments, money or securities;

“inventory” means goods that are held by a person for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;

“money” means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada or by a foreign government as part of its currency;

“obligation secured”, for the purposes of determining the amount payable under a lease, means the amount contracted to be paid as rent under the lease and all other amounts that have or may become payable under the lease, including the amount, if any, required to be paid by the lessee to obtain full ownership of the collateral, as of the relevant date, less any amounts paid;

“personal property” means chattel paper, documents of title, goods, instruments, intangibles, money and securities and includes fixtures but does not include building materials that have been affixed to real property;

“prescribed” means prescribed by the regulations;

“proceeds” means identifiable or traceable personal property in any form derived directly or indirectly from any dealing with collateral or the proceeds therefrom, and includes any payment representing indemnity or compensation for loss of or damage to the collateral or proceeds therefrom;

“purchase” includes taking by sale, lease, negotiation, mortgage, pledge, lien, gift or any other consensual transaction creating an interest in personal property;

“purchase-money security interest” means,

- (a) a security interest taken or reserved in collateral to secure payment of all or part of its price, or



- (b) a security interest taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to collateral to the extent that the value is applied to acquire the rights,

but does not include a transaction of sale by and lease back to the seller;

“purchaser” means a person who takes by purchase;

“registrar” means the registrar of personal property security;

“regulations” means the regulations made under this Act;

“secured party” means a person who holds a security interest for the person’s own benefit or for the benefit of any other person and includes a trustee where the holders of obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest and for the purposes of sections 17, 59 to 64, 66 and 67 includes a receiver or receiver and manager;

“security” means a document that is,

- (a) issued in bearer, order or registered form,
- (b) of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,
- (c) one of a class or series or by its terms is divisible into a class or series of documents, and
- (d) evidence of a share, participation or other interest in property or in an enterprise or is evidence of an obligation of the issuer,

and includes an uncertificated security within the meaning of Part VI (Investment Securities) of the *Business Corporations Act*, 1982; 1982, c. 4

“security agreement” means an agreement that creates or provides for a security interest and includes a document evidencing a security interest;

“security interest” means an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or

performance of an obligation, the interest of a transferee of an account or chattel paper;

“trust indenture” means any security agreement by the terms of which a body corporate, with or without share capital and wherever or however incorporated,

- (a) issues or guarantees debt obligations or provides for the issue or guarantee of debt obligations, and
- (b) appoints a person as trustee for the holders of the debt obligations so issued, guaranteed or provided for;

“value” means any consideration sufficient to support a simple contract and includes an antecedent debt or liability. R.S.O. 1980, c. 375, s. 1, *amended*.

#### Fungibles

(2) For the purposes of this Act, fungible goods and fungible securities are goods or securities, as the case may be, of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement. *New.*

## PART I

### APPLICATION AND CONFLICT OF LAWS

#### Application of Act, general

**2.** Subject to subsection 4 (1), this Act applies to,

- (a) every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest including, without limiting the foregoing,
  - (i) a chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and
  - (ii) an assignment, lease or consignment that secures payment or performance of an obligation; and
- (b) a transfer of an account or chattel paper even though the transfer may not secure payment or performance of an obligation. R.S.O. 1980, c. 375, s. 2, *amended*.

**3.** This Act applies to the Crown and every agency of the Crown. *New.* Application to Crown

**4.—(1)** This Act does not apply, Non-application of Act

(a) to a lien given by statute or rule of law, except as provided in subclause 20 (1) (a) (i) or section 31;

(b) to a deemed trust arising under any Act, except as provided in subsection 30 (7);

(c) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity;

(d) to a transaction under the *Pawnbrokers Act*; R.S.O. 1980, c. 372

(e) to the creation or assignment of an interest in real property, including a mortgage, charge or lease of real property, other than,

(i) an interest in a fixture, or

(ii) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor's interest in the real property;

(f) to an assignment for the general benefit of creditors to which the *Assignments and Preferences Act* applies; R.S.O. 1980, c. 33

(g) to a sale of accounts or chattel paper as part of a transaction to which the *Bulk Sales Act* applies; R.S.O. 1980, c. 52

(h) to an assignment of accounts made solely to facilitate the collection of accounts for the assignor; or

(i) to an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract. R.S.O. 1980, c. 375, s. 3 (1); 1981, c. 58, s. 1, amended.

(2) The rights of buyers and sellers under subsection 20 (2) and sections 39, 40, 41 and 43 of the *Sale of Goods Act* are not affected by this Act. Rights under R.S.O. 1980, c. 462 not affected

**5.—(1)** Except as otherwise provided in this Act, the validity, perfection and effect of perfection or non-perfection of, Conflict of laws, location of collateral



- (a) a security interest in goods; and
- (b) a possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the collateral is situated at the time the security interest attaches.

Perfection of  
security  
interest  
continued

(2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into Ontario continues perfected in Ontario if a financing statement is registered in Ontario before the goods are brought in or if it is perfected in Ontario,

- (a) within sixty days after the goods are brought in;
- (b) within fifteen days after the day the secured party receives notice that the goods have been brought in; or
- (c) before the date that perfection ceases under the law of the jurisdiction in which the goods were situated at the time the security interest attached,

whichever is earliest, but the security interest is subordinate to the interest of a buyer or lessee of those goods who acquires the goods from the debtor as consumer goods in good faith and without knowledge of the security interest and before the security interest is perfected in Ontario.

Perfection  
otherwise

(3) Subsection (2) does not apply so as to prevent the perfection of a security interest after the expiry of the time limit set out in that subsection.

Perfection in  
Ontario

(4) Where a security interest mentioned in subsection (1) is not perfected under the law of the jurisdiction in which the collateral was situated at the time the security interest attached and before being brought into Ontario, the security interest may be perfected under this Act.

Revendi-  
cation

(5) Where goods brought into Ontario are subject to an unpaid seller's right to revendicate or to resume possession of the goods under the law of the Province of Quebec or any other jurisdiction, the right becomes unenforceable in Ontario twenty days after the goods are brought into Ontario unless the seller registers a financing statement or repossesses the goods within that twenty-day period. *New.*



**6.—**(1) Subject to section 7, if the parties to a security agreement creating a security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and the goods are removed to that other jurisdiction, for purposes other than transportation through the other jurisdiction, within thirty days after the security interest attached, the validity, perfection and effect of perfection or non-perfection of the security interest shall be governed by the law of the other jurisdiction.

Goods  
brought into  
province

(2) If the other jurisdiction mentioned in subsection (1) is not Ontario, and the goods are later brought into Ontario, the security interest in the goods is deemed to be one to which subsection 5 (2) applies if it was perfected under the law of the jurisdiction to which the goods were removed. *New.*

Perfection in  
province

**7.—**(1) The validity, perfection and effect of perfection or non-perfection,

Conflict of  
laws, location  
of debtor

(a) of a security interest in,

(i) an intangible, or

(ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; and

(b) of a non-possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest attaches.

(2) If a debtor changes location to Ontario, a perfected security interest referred to in subsection (1) continues perfected in Ontario if it is perfected in Ontario,

Change of  
location

(a) within sixty days from the day the debtor changes location;

(b) within fifteen days from the day the secured party receives notice that the debtor has changed location; or

(c) prior to the day that perfection ceases under the law of the jurisdiction referred to in subsection (1),

whichever is the earliest.

Idem

(3) A security interest that is not perfected as provided in subsection (2) may be otherwise perfected under this Act.

Location of debtor

(4) For the purpose of this section, a debtor shall be deemed to be located at the debtor's place of business if there is one, at the debtor's chief executive office if there is more than one place of business, and otherwise at the debtor's principal place of residence. *New.*

Procedural and substantive issues

**8.—**(1) Despite sections 5, 6 and 7,

- (a) procedural matters affecting the enforcement of the right of a secured party in respect of collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of those rights;
- (b) procedural matters affecting the enforcement of the rights of a secured party against intangibles are governed by the law of the forum; and
- (c) substantive matters affecting the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.

Deemed perfection

(2) For the purposes of this Part, a security interest shall be deemed to be perfected under the law of a jurisdiction if the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest that is enforceable against the debtor and third parties. *New.*

## PART II

### VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

Effectiveness of security agreement

**9.—**(1) Except as otherwise provided by this or any other Act, a security agreement is effective according to its terms between the parties to it and against third parties. *R.S.O. 1980, c. 375, s. 9.*

Idem

(2) A security agreement is not unenforceable against a third party by reason only of a defect, irregularity, omission or error therein or in the execution thereof unless the third party is actually misled by the defect, irregularity, omission or error. *New.*

(3) Without restricting the generality of subsection (2), the failure to describe some of the collateral in a security agreement does not affect the effectiveness of the security agreement with respect to the collateral that is described. *New.* Idem

**10.** Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor within ten days after the execution thereof, and, if the secured party fails to do so after a request by the debtor, the District Court, on the application of the debtor, may order the delivery of such a copy to the debtor. R.S.O. 1980, c. 375, s. 11, *amended.* Delivery of copy of agreement

**11.—(1)** A security interest is not enforceable against a third party unless it has attached. Attachment required

(2) A security interest, including a security interest in the nature of a floating charge, attaches when, When security interest attaches

- (a) the secured party or a person on behalf of the secured party other than the debtor or the debtor's agent obtains possession of the collateral or when the debtor signs a security agreement that contains a description of the collateral sufficient to enable it to be identified;
- (b) value is given; and
- (c) the debtor has rights in the collateral,

unless the parties have agreed to postpone the time for attachment, in which case the security interest attaches at the agreed time. R.S.O. 1980, c. 375, ss. 10, 12 (1), *amended.*

(3) For the purpose of subsection (2), the debtor has no rights in, Idem

- (a) crops until they become growing crops;
- (b) fish until they are caught;
- (c) the young of animals until they are conceived;
- (d) minerals or hydrocarbons until they are extracted;  
or
- (e) timber until it is cut. R.S.O. 1980, c. 375, s. 12 (2), *amended.*



After-  
acquired  
property

**12.—(1)** A security agreement may cover after-acquired property.

Exception

(2) No security interest attaches under an after-acquired property clause in a security agreement,

- (a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage; or
- (b) to consumer goods, other than accessions, unless the debtor acquires rights in them within ten days after the secured party gives value. R.S.O. 1980, c. 375, s. 13, *amended*.

Future  
advances

**13.** A security agreement may secure future advances. R.S.O. 1980, c. 375, s. 15, *amended*.

Agreement  
not to assert  
defence  
against  
assignee

**14.—(1)** An agreement by a debtor not to assert against an assignee any claim or defence that the debtor has against the debtor's seller or lessor is enforceable by the assignee who takes the assignment for value, in good faith and without notice, except as to such defences as may be asserted against a holder in due course of a negotiable instrument under the *Bills of Exchange Act* (Canada). R.S.O. 1980, c. 375, s. 16.

R.S.C. 1985,  
c. B-4

Non-  
application  
R.S.O. 1980,  
c. 87, s. 31  
Seller's  
warranties

(2) Subsection (1) does not apply to an assignment to which section 31 of the *Consumer Protection Act* applies. *New*.

**15.** Where a seller retains a purchase-money security interest in goods,

- (a) the *Sale of Goods Act* governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and
- (b) except as provided in section 14, the conditions and warranties in a sale agreement shall not be affected by any security agreement. R.S.O. 1980, c. 375, s. 17, *amended*.

R.S.O. 1980,  
c. 462

Acceleration  
provisions

**16.** Where a security agreement provides that the secured party may accelerate payment or performance if the secured party considers that the collateral is in jeopardy or that the secured party is insecure, the agreement shall be construed to mean that the secured party may accelerate payment or per-



formance only if the secured party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy. R.S.O. 1980, c. 375, s. 18, *amended*.

**17.—**(1) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties. R.S.O. 1980, c. 375, s. 19 (1).

Care of  
collateral

(2) Unless otherwise agreed, where collateral is in the secured party's possession,

Idem, rights  
and duties of  
secured party

- (a) reasonable expenses, including the cost of insurance and payment of taxes and other charges incurred in obtaining and maintaining possession of the collateral and in its preservation, are chargeable to the debtor and are secured by the collateral;
- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the obligation secured;
- (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- (e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it. R.S.O. 1980, c. 375, s. 19 (2), *amended*.

(3) A secured party is liable for any loss or damage caused by the secured party's failure to meet any obligations imposed by subsection (1) or (2), but does not lose the security interest in the collateral.

Liability for  
loss

(4) A secured party may use the collateral,

Use of  
collateral

- (a) in the manner and to the extent provided in the security agreement;
- (b) for the purpose of preserving the collateral or its value; or
- (c) pursuant to an order of,
  - (i) the court before which a question relating thereto is being heard, or
  - (ii) the District Court upon application by the secured party.

Idem

(5) A secured party,

- (a) is liable for any loss or damage caused by the secured party's use of the collateral otherwise than as authorized by subsection (4); and
- (b) is subject to being ordered or restrained as provided in subsection 67 (1). R.S.O. 1980, c. 375, s. 19 (3-5).

Statements of  
account

**18.—(1)** A person who is a debtor or judgment creditor or who has an interest in the collateral or who is the authorized representative of such a person, by a notice in writing given to the secured party and containing an address for reply, may require the secured party to furnish to the person any one or more of,

- (a) a statement in writing of the amount of the indebtedness and the terms of payment thereof as of the date specified in the notice;
- (b) a statement in writing approving or correcting as of the date specified in the notice a statement of the collateral or a part thereof as specified in a list attached to the notice;
- (c) a statement in writing approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof;
- (d) a true copy of the security agreement; or
- (e) sufficient information as to the location of the security agreement or a true copy thereof so as to enable inspection of the security agreement or copy.

(2) Clauses (1) (a), (b) and (c) do not apply where the secured party is the trustee under a trust indenture.

Exception,  
indenture  
trustee

(3) The secured party, on the reasonable request of a person entitled to receive a true copy of the security agreement under clause (1) (d), shall permit the person or the person's authorized representative to inspect the security agreement or a true copy thereof during normal business hours at the location disclosed under clause (1) (e).

Inspection of  
security  
agreement

(4) If the secured party claims a security interest in all of the collateral or in all of a particular type of collateral owned by the debtor, the secured party may so indicate in lieu of approving or correcting the list of such collateral as required by clause (1) (b).

Idem

(5) Subject to the payment of any charge required under subsection (7), the secured party shall answer a notice given under subsection (1) within fifteen days after receiving it, and, if without reasonable excuse,

Time for  
compliance  
with notice,  
liability for  
failure to  
answer

(a) the secured party does not answer within such fifteen-day period, the secured party is liable for any loss or damage caused thereby to any person who is entitled to receive information under this section; or

(b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer.

(6) Where the person receiving a notice under subsection (1) no longer has a security interest in the collateral, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse the person fails to do so or the answer is incomplete or incorrect, the person is liable for any loss or damage caused thereby to any person entitled to receive information under this section.

Successors in  
interest

(7) The secured party may require payment in advance of the charge prescribed for each statement or copy of the security agreement required under subsection (1), but the debtor is entitled to a statement without charge once in every six months.

Charges

(8) On an application to the District Court, the court, by order, may,

Court order



- (a) exempt, in whole or in part, the secured party from complying with a notice given under subsection (1), or a request under subsection (3), if the person giving the notice, not being the debtor, does not establish to the satisfaction of the court that the person has an interest in the collateral or that the person is a judgment creditor;
- (b) extend the time for complying with the notice given under subsection (1);
- (c) require the secured party to comply with a notice given under subsection (1) or a request under subsection (3); or
- (d) make such other order as it considers just.

**Liability**

(9) An order made under clause (8) (b) or (c) does not affect the liability of the secured party under subsection (5).

**Extended  
time for  
compliance**

(10) Despite subsection (9), where the secured party applies to the District Court for an extension of time under clause (8) (b) within fifteen days of receiving a notice under subsection (1) and the court makes an order extending the time for compliance, the secured party shall answer the notice within the time as extended and not within the time as required by subsection (5) and, if without reasonable excuse,

- (a) the secured party fails to answer the notice within the time as extended, the secured party is liable for any loss or damage caused thereby to any person entitled to receive information under this section; or
- (b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer. R.S.O. 1980, c. 375, s. 20, *amended*.

**PART III****PERFECTION AND PRIORITIES****Perfection**

**19.** A security interest is perfected when,

- (a) it has attached; and
- (b) all steps required for perfection under any provision of this Act have been completed,



regardless of the order of occurrence. R.S.O. 1980, c. 375, s. 21.

**20.—**(1) Except as provided in subsection (3), until perfected, a security interest, Unperfected  
security  
interests

(a) in collateral is subordinate to the interest of,

(i) a person who has a perfected security interest in the same collateral or who has a lien given under any other Act or by a rule of law or who has a priority under any other Act, or

(ii) a person who assumes control of the collateral through execution, attachment, garnishment, charging order, equitable execution or other legal process, or

(iii) all persons entitled by the *Creditors' Relief Act* or otherwise to participate in the distribution of the property over which a person described in subclause (ii) has assumed control, or the proceeds of such property; R.S.O. 1980,  
c. 103

(b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;

(c) in chattel paper, documents of title, securities, instruments or goods is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value and receives delivery thereof without knowledge of the security interest;

(d) in intangibles other than accounts is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest.

(2) The rights of a person,

*Idem*

(a) who has a statutory lien referred to in subclause (1) (a) (i) arise,

(i) in the case of the bankruptcy of the debtor, at the effective date of the bankruptcy, or

(ii) in any other case, when the lienholder has taken possession or otherwise done everything necessary to make the lien enforceable in accordance with the provisions of the Act creating the lien;

(b) under clause (1) (b) in respect of the collateral are to be determined as of the date from which the person's representative status takes effect.

Purchase-money security interest

(3) A purchase-money security interest that is perfected by registration,

(a) in collateral, other than an intangible, before or within ten days after,

(i) the debtor obtains possession of the collateral, or

(ii) a third party, at the request of the debtor, obtains possession of the collateral,

whichever is earlier; or

(b) in an intangible before or within ten days after the attachment of the security interest in the intangible,

has priority over,

(c) an interest set out in subclause (1) (a) (ii) and is effective against a person described in clause (1) (b); and

(d) the interest of a transferee of collateral that forms all or part of a sale in bulk within the meaning of the *Bulk Sales Act*. R.S.O. 1980, c. 375, s. 22, amended.

R.S.O. 1980, c. 52

Continuity of perfection

**21.**—(1) If a security interest is originally perfected in any way permitted under this Act and is again perfected in some way under this Act without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Act.

Assignees

(2) An assignee of a security interest succeeds in so far as its perfection is concerned to the position of the assignor at the time of the assignment. R.S.O. 1980, c. 375, s. 23.

Perfection by possession or repossession

**22.** Possession or repossession of the collateral by the secured party, or on the secured party's behalf by a person

other than the debtor or the debtor's agent, perfects a security interest in,

- (a) chattel paper;
- (b) goods;
- (c) instruments;
- (d) securities;
- (e) negotiable documents of title; and
- (f) money,

but only while it is actually held as collateral. R.S.O. 1980, c. 375, s. 24, *amended*.

**23.** Registration perfects a security interest in any type of collateral. *New.* Perfection by registration

**24.—(1)** A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value secured by a written security agreement. R.S.O. 1980, c. 375, s. 26 (1). Temporary perfection

(2) A security interest perfected by possession in, Idem

- (a) an instrument or a security that a secured party delivers to the debtor for,
  - (i) ultimate sale or exchange,
  - (ii) presentation, collection or renewal, or
  - (iii) registration of transfer; or
- (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of,
  - (i) ultimate sale or exchange,
  - (ii) loading, unloading, storing, shipping or transshipping, or



- (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first ten days after the collateral comes under the control of the debtor. R.S.O. 1980, c. 375, s. 26 (2), *amended*.

Idem

(3) Beyond the period of ten days referred to in subsection (1) or (2), a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest. R.S.O. 1980, c. 375, s. 26 (3).

Perfecting as to proceeds

**25.**—(1) Where collateral gives rise to proceeds, the security interest therein,

- (a) continues as to the collateral, unless the secured party expressly or impliedly authorized the dealing with the collateral; and
- (b) extends to the proceeds. R.S.O. 1980, c. 375, s. 27 (1), *amended*.

Idem

(2) Where the security interest was perfected by registration when the proceeds arose, the security interest in the proceeds remains continuously perfected so long as the registration remains effective or, where the security interest is perfected with respect to the proceeds by any other method permitted under this Act, for so long as the conditions of such perfection are satisfied.

Idem

(3) A security interest in proceeds is a continuously perfected security interest if the interest in the collateral was perfected when the proceeds arose.

Idem

(4) If a security interest in collateral was perfected otherwise than by registration, the security interest in the proceeds becomes unperfected ten days after the debtor acquires an interest in the proceeds unless the security interest in the proceeds is perfected under this Act.

Motor vehicles classified as consumer goods

(5) Where a motor vehicle, as defined in the regulations, is proceeds, a person who buys or leases the vehicle as consumer goods in good faith takes it free of any security interest therein that extends to it under clause (1) (b) even though it is perfected under subsection (2) unless the secured party has registered a financing change statement that sets out the vehicle identification number in the designated place. *New*.

**26.—**(1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto. R.S.O. 1980, c. 375, s. 28 (1). Perfecting as to goods held by a bailee

(2) A security interest in collateral in the possession of a person, other than the debtor, the debtor's agent or a bailee mentioned in subsection (1), is perfected by, Idem

- (a) issuance of a document of title in the name of the secured party;
- (b) possession on behalf of the secured party; or
- (c) registration. R.S.O. 1980, c. 375, s. 28 (2), *amended*.

**27.—**(1) Where a debtor sells or leases goods that are subject to a security interest, the security interest in the goods reattaches to the goods, if, Goods returned or repossessed

- (a) the buyer or lessee has taken free of the security interest under clause 25 (1) (a) or subsection 28 (1) or (2);
- (b) the goods are returned to or repossessed by the debtor; and
- (c) the obligation secured remains unpaid or unperformed.

(2) Where a security interest in goods reattaches under subsection (1), then any question as to, Idem

- (a) whether or not the security interest in the goods is perfected; and
- (b) the time of its perfection or registration,

shall be determined as if the goods had not been sold or leased.

(3) If a sale or lease of goods creates an account or chattel paper and, Where sale or lease creates an account or chattel paper

- (a) the account or chattel paper is transferred to a secured party; and

- (b) the goods are returned to or repossessed by the seller or lessor,

the transferee has a security interest in the goods.

Temporary  
perfection

(4) A security interest in goods arising under subsection (3) is perfected if the security interest in the account or chattel paper was also perfected but becomes unperfected on the expiration of ten days after the return or repossession of the goods unless the transferee registers a financing statement in respect of the security interest in, or takes possession of, the goods before the expiry of that period.

Transferee of  
account

(5) Where a transferee of an account has a perfected security interest in goods under subsections (3) and (4), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee's security interest in the account was perfected.

Transferee of  
chattel paper

(6) Where a transferee of chattel paper has a perfected security interest in goods under subsections (3) and (4),

- (a) as between the transferee and the holder of a perfected security interest that attached under subsection (1), the person who had priority as to the chattel paper also has priority as to the goods; and
- (b) as between the transferee and a person other than the holder of a perfected security interest that attached under subsection (1), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee's security interest in the chattel paper was perfected. R.S.O. 1980, c. 375, s. 29, *amended*.

Transactions  
in ordinary  
course of  
business,  
buyers of  
goods

**28.—**(1) A buyer of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by the seller even though it is perfected and the buyer knows of it, unless the buyer also knew that the sale constituted a breach of the security agreement.

Idem, lessors  
of goods

(2) A lessee of goods from a lessor who leases the goods in the ordinary course of business holds the goods, to the extent of the lessee's rights under the lease, free from any security interest therein given by the lessor even though it is perfected



and the lessee knows of it, unless the lessee also knew that the lease constituted a breach of the security agreement.

(3) A purchaser of chattel paper who takes possession of it in the ordinary course of business has, to the extent that the purchaser gives new value, priority over any security interest in it, Idem, purchasers of chattel paper

- (a) that was perfected by registration if the purchaser did not know at the time of taking possession that the chattel paper was subject to a security interest; or
- (b) that has attached to proceeds of inventory under section 25, whatever the extent of the purchaser's knowledge.

(4) A purchaser of collateral that is an instrument or negotiable document of title has priority over any security interest therein perfected by registration or temporarily perfected under section 23 or 24 if the purchaser, Idem, purchasers of instruments

- (a) gave value for the interest purchased;
- (b) purchased the collateral without knowledge that it was subject to a security interest; and
- (c) has taken possession of the collateral.

(5) Where a motor vehicle, as defined in the regulations, is sold other than in the ordinary course of business of the seller and the motor vehicle is classified as equipment of the seller, the buyer takes it free from any security interest therein given by the seller even though it is perfected by registration unless the vehicle identification number of the motor vehicle is set out in the designated place on a registered financing statement or financing change statement or unless the buyer knew that the sale constituted a breach of the security agreement. Motor vehicles, transaction other than in ordinary course

(6) A *bona fide* purchaser of a security, whether in the form of a security certificate or an uncertificated security, who has taken possession of it, has priority over any security interest in it perfected by registration or temporarily perfected under section 23 or 24. Securities

(7) A purchaser of a security, whether in the form of a security certificate or an uncertificated security, who purchases the security in the ordinary course of business and has taken possession of it, has priority over any security interest in it perfected by registration or temporarily perfected under sec- Idem

tion 23 or 24, even though the purchaser knows of the security interest, if the purchaser did not know the purchase constituted a breach of the security agreement.

## Definitions

1982, c. 4

(8) For the purposes of subsections (6) and (7), “*bona fide purchaser*”, “*purchaser*”, “*security*”, “*security certificate*” and “*uncertificated security*” have the same meaning as in sections 53 and 85 of the *Business Corporations Act, 1982. New.*

## Negotiable instruments, etc.

R.S.C. 1985, c. B-4

**29.** The rights of a person who is,

- (a) a holder in due course of a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada); or

- (b) a transferee from the debtor of money,

are to be determined without regard to this Act. R.S.O. 1980, c. 375, s. 31 (1), *amended*.

## Priorities, general rule

**30.—**(1) If no other provision of this Act is applicable, the following priority rules apply to security interests in the same collateral:

1. Where priority is to be determined between security interests perfected by registration, priority shall be determined by the order of registration regardless of the order of perfection.
2. Where priority is to be determined between a security interest perfected by registration and a security interest perfected otherwise than by registration,
  - i. the security interest perfected by registration has priority over the other security interest if the registration occurred before the perfection of the other security interest, and
  - ii. the security interest perfected otherwise than by registration has priority over the other security interest, if the security interest perfected otherwise than by registration was perfected before the registration of a financing statement related to the other security interest.
3. Where priority is to be determined between security interests perfected otherwise than by registration,

priority shall be determined by the order of perfection.

4. Where priority is to be determined between unperfected security interests, priority shall be determined by the order of attachment. R.S.O. 1980, c. 375, s. 35 (1), *amended*.

(2) For the purpose of subsection (1), a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by registration if it was originally perfected otherwise than by registration. R.S.O. 1980, c. 375, s. 35 (2). Idem

(3) Subject to subsection (4), where future advances are made while a security interest is perfected, the security interest has the same priority with respect to each future advance as it has with respect to the first advance. Future advances

(4) A future advance under a perfected security interest is subordinate to the rights of persons mentioned in subclauses 20 (1) (a) (ii) and (iii) if the advance was made after the secured party received written notification of the interest of any such person unless, Exception

- (a) the secured party makes the advance for the purpose of paying reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral and its preservation; or
- (b) the secured party is bound to make the advance, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the obligation.

(5) For the purpose of subsection (1), the date for registration or perfection as to collateral is also the date for registration or perfection as to proceeds. Proceeds

(6) Where a security interest that is perfected by registration becomes unperfected and is again perfected by registration, the security interest shall be deemed to have been continuously perfected from the time of first perfection except that if a person acquired rights in all or part of the collateral during the period when the security interest was unperfected, the registration shall not be effective as against the person who acquired the rights during such period. *New*. Reperfected security interests



## Deemed trusts

R.S.O. 1980,  
c. 137  
1987, c. 35

(7) A security interest in an account or inventory and its proceeds is subordinate to the interest of a person who is the beneficiary of a deemed trust arising under the *Employment Standards Act* or under the *Pension Benefits Act*, 1987.

## Exception

(8) Subsection (7) does not apply to a perfected purchase-money security interest in inventory or its proceeds.

## Liens for materials and services

**31.** Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that the person has in respect of the materials or services has priority over a perfected security interest unless the lien is given by an Act that provides that the lien does not have such priority. R.S.O. 1980, c. 375, s. 32, *amended*.

## Crops

**32.—(1)** A perfected security interest in crops or their proceeds, given not more than six months before the crops become growing crops by planting or otherwise, to enable the debtor to produce the crops during the production season, has priority over an earlier perfected security interest in the same collateral to the extent that the earlier interest secures obligations that were due more than six months before the crops become growing crops by planting or otherwise even though the person giving value has notice of the earlier security interest.

## Idem

(2) Where more than one perfected security interest is given priority by subsection (1), each ranks equally according to the ratio that the amount advanced with respect to each bears to the total amount advanced. R.S.O. 1980, c. 375, s. 34 (1), *amended*.

## Purchase-money security interest, inventory

**33.—(1)** A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor, if,

(a) the purchase-money security interest was perfected at the time,

(i) the debtor obtained possession of the inventory, or

(ii) a third party, at the request of the debtor, obtained or held possession of the inventory,

whichever is earlier;

(b) before the debtor receives possession of the inventory, the purchase-money secured party gives notice

in writing to every other secured party who has registered a financing statement in which the collateral is classified as inventory before the date of registration by the purchase-money secured party; and

- (c) the notice referred to in clause (b) states that the person giving it has or expects to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type.

(2) Except where the collateral or its proceeds is inventory or its proceeds, a purchase-money security interest in collateral or its proceeds has priority over any other security interest in the same collateral given by the same debtor if the purchase-money security interest, Purchase-money security interests other than inventory

- (a) in the case of collateral, other than an intangible, was perfected before or within ten days after,

- (i) the debtor obtained possession of the collateral as a debtor, or

- (ii) a third party, at the request of the debtor, obtained or held possession of the collateral,

whichever is earlier; or

- (b) in the case of an intangible, was perfected before or within ten days after the attachment of the purchase-money security interest in the intangible. R.S.O. 1980, c. 375, s. 34 (2, 3), *amended*.

(3) Where more than one purchase-money security interest is given priority by subsections (1) and (2), the purchase-money security interest, if any, of the seller has priority over any other purchase-money security interest given by the same debtor. *New.* Priority of seller's purchase-money security interest

### 34.—(1) A security interest in goods that attached,

Fixtures

- (a) before the goods became a fixture, has priority as to the fixture over the claim of any person who has an interest in the real property; or

- (b) after the goods became a fixture, has priority as to the fixture over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security interest in the goods attached and who has not con-

sented in writing to the security interest or disclaimed an interest in the fixture.

Exceptions

(2) A security interest mentioned in subsection (1) is subordinate to the interest of,

- (a) a subsequent purchaser for value of an interest in the real property; or
- (b) a creditor with a prior encumbrance of record on the real property to the extent that the creditor makes subsequent advances,

if the subsequent purchase or subsequent advance under a prior encumbrance of record is made or contracted for without knowledge of the security interest and before notice of it is registered in accordance with section 54.

Removal of collateral

(3) If a secured party has an interest in a fixture that has priority over the claim of a person having an interest in the real property, the secured party may, on default and subject to the provisions of this Act respecting default, remove the fixture from the real property if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury but excluding diminution in the value of the real property caused by the absence of the fixture or by the necessity for replacement.

Security

(4) A person entitled to reimbursement under subsection (3) may refuse permission to remove the fixture until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 36 (1-4), *amended*.

Notice

(5) A secured party who has the right to remove a fixture from real property shall serve, on each person who appears by the records of the proper land registry office to have an interest in the real property, a notice in writing of the secured party's intention to remove the fixture containing,

- (a) the name and address of the secured party;
- (b) a description of the fixture to be removed sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligation secured by the security interest of the secured party;



- (d) a description of the real property to which the fixture is affixed sufficient to enable the real property to be identified; and
- (e) a statement of intention to remove the fixture unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

(6) The notice mentioned in subsection (5) shall be served in accordance with section 68 or by registered mail addressed to the person to whom notice is to be given at the address furnished under section 166 of the *Land Titles Act* or section 37 of the *Registry Act*, or where no such address has been furnished, addressed to the solicitor whose name appears on the registered instrument by which the person appears to have an interest. *New.*

Idem

R.S.O. 1980,  
cc. 230, 445

(7) A person having an interest in real property that is subordinate to a security interest in a fixture may, before the fixture has been removed from the real property by the secured party in accordance with subsection (3), retain the fixture upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest. R.S.O. 1980, c. 375, s. 36 (5), *amended*.

Retention of  
collateral

**35.—**(1) Subject to subsections (2) and (3) of this section and section 37, a security interest in goods that attached,

Accessions

- (a) before the goods became an accession, has priority as to the accession over the claim of any person in respect of the whole; and
- (b) after the goods became an accession, has priority as to the accession over the claim of any person who subsequently acquired an interest in the whole, but not over the claim of any person who had an interest in the whole at the date the security interest attached to the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

(2) A security interest referred to in subsection (1),

Exceptions

- (a) is subordinate to the interest of,
  - (i) a subsequent buyer of an interest in the whole, and

- (ii) a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances,

if the subsequent sale or subsequent advance under the prior perfected security interest is made or contracted for before the security interest is perfected; and

- (b) is subordinate to the interest of a creditor of the debtor who assumes control of the whole through execution, attachment, garnishment, charging order, equitable execution or other legal process, if control is assumed before the security interest is perfected. R.S.O. 1980, c. 375, s. 37 (1, 2), *amended*.

Idem

(3) Despite clause (2) (b), a purchase-money security interest in an accession that is perfected before or within ten days after the debtor obtains possession of the accession has priority over the interest of a creditor referred to in that clause. *New*.

Removal of collateral

(4) If a secured party has an interest in an accession that has priority over the claim of any person having an interest in the whole, the secured party may, on default and subject to the provisions of this Act respecting default, remove the accession from the whole if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the accession or by the necessity for replacement.

Security

(5) A person entitled to reimbursement under subsection (4) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 37 (3), *amended*.

Notice

(6) The secured party who has the right to remove an accession from the whole shall serve, on each person known to the secured party as having an interest in the other goods and on any person with a security interest in such other goods perfected by registration against the name of the debtor or against the vehicle identification number of such other goods, if such number is required for registration, a notice in writing of the secured party's intention to remove the accession containing,

- (a) the name and address of the secured party;

- (b) a description of the accession to be removed sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligations secured by the security interest of the secured party;
- (d) a description of the other goods sufficient to enable them to be identified; and
- (e) a statement of intention to remove the accession from the whole unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

(7) The notice mentioned in subsection (6) shall be served in accordance with section 68 at least ten days before the accession is removed. *Idem* *New.*

(8) A person having an interest in the whole that is subordinate to a security interest in the accession may, before the accession has been removed by the secured party in accordance with subsection (3), retain the accession upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest. *Retention of collateral*  
R.S.O. 1980, c. 375, s. 37 (4), *amended.*

**36.**—(1) A security interest in a right to payment under a lease of real property, to which this Act applies, is subordinate to the interest of a person who acquires for value the lessor's interest in the lease or in the real property thereby demised if the interest, or notice thereof, of the person is registered in the proper land registry office before the interest, or notice thereof, of the secured party is registered in the proper land registry office. *Real property payments, rents*

(2) A security interest in a right to payment under a mortgage or charge of real property, to which this Act applies, is subordinate to the interest of a person who acquires for value the mortgagee's or chargee's interest in the mortgage or charge if the interest of the person is registered in the proper land registry office before a notice of the security interest is registered in the proper land registry office. *Mortgages* 1981, c. 58, s. 2.

**37.** A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interests rank *Commingled goods*



equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. R.S.O. 1980, c. 375, s. 38.

Subordina-  
tion

**38.** A secured party may, in the security agreement or otherwise, subordinate the secured party's security interest to any other security interest and such subordination is effective according to its terms. R.S.O. 1980, c. 375, s. 39, *amended*.

Alienation of  
rights of a  
debtor

**39.** The rights of a debtor in collateral may be transferred voluntarily or involuntarily despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise. R.S.O. 1980, c. 375, s. 33.

Person  
obligated on  
an account  
or on chattel  
paper

**40.—(1)** Unless a person obligated on an account or on chattel paper has made an enforceable agreement not to assert defences or claims arising out of a contract, the rights of an assignee are subject to,

- (a) all the terms of the contract between the person and the assignor and any defence or claim arising therefrom; and
- (b) any other defence or claim of the person against the assignor that accrued before the person received notice of the assignment.

Idem

**(2)** A person obligated on an account or on chattel paper may pay the assignor until the person receives notice, reasonably identifying the relevant rights, that the account or chattel paper has been assigned, and, if requested by the person, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if the assignee does not do so, the person may pay the assignor. R.S.O. 1980, c. 375, s. 40 (1, 2), *amended*.

Modification,  
etc., effective  
against  
assignee

**(3)** To the extent that the right to payment or part payment under an assigned contract has not been earned by performance, and despite notice of the assignment, any modification of or substitution for the contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effect upon the assignee's right under or the assignor's ability to perform the contract, is effective against an assignee unless the person obligated on the account or chattel paper has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract. *New*.

## PART IV

## REGISTRATION

- 41.**—(1) A registration system, including a central office and branch offices, shall be maintained for the purposes of this Act and the *Repair and Storage Liens Act, 1989*. R.S.O. 1980, c. 375, s. 41 (1), *amended*. Registration system  
1989, c. 17
- (2) The central office of the registration system shall be located at or near the City of Toronto. Central office
- (3) Branch offices of the registration system shall be established at such places as are designated by the regulations. R.S.O. 1980, c. 375, s. 41 (2, 3). Branch offices
- 42.**—(1) There shall be a registrar of personal property security and a branch registrar for each branch office. Registrar,  
branch  
registrars
- (2) The registrar shall be the public servant designated as registrar by the Minister of Consumer and Commercial Relations. Idem
- (3) The branch registrars shall be those public servants designated by name or position as branch registrars by the registrar. Idem
- (4) The registrar shall have a seal of office in such form as the Lieutenant Governor in Council may by order approve. R.S.O. 1980, c. 375, s. 42, *amended*. Seal of office
- (5) No action or other proceeding for damages shall be instituted against the registrar or any person employed in the Ministry of Consumer and Commercial Relations for any act done in good faith in the execution or intended execution of the person's duty under this Act or the *Repair and Storage Liens Act, 1989* or for any alleged neglect or default in the execution in good faith of the person's duty thereunder. Protection  
from  
personal  
liability  
1989, c. 17
- (6) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act* but subject to subsection 44 (18), subsection (5) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (5) to which it would otherwise be subject. Crown  
Liability  
R.S.O. 1980,  
c. 393
- (7) The registrar and each branch registrar may designate one or more public servants to act on his or her behalf. R.S.O. 1980, c. 375, s. 43. Delegation

Certificate of  
registrar

**43.—**(1) Upon the request of any person for a search of the individual debtor name index, business debtor name index or motor vehicle identification number index and upon payment of the prescribed fee, the registrar shall issue a certificate stating,

- (a) whether, at the time mentioned in the certificate, there is registered a financing statement or a financing change statement the registration of which is recorded in the central file of the registration system in which the name or number with respect to which the inquiry is made is shown in the designated place on the financing statement or financing change statement as a debtor or as a motor vehicle identification number, as the case may be, and, if there is, the registration number of it and any other recorded information;
- (b) whether, at the time mentioned in the certificate, there is entered in the central file of the registration system any information required or permitted to be entered by section 78 in which the name with respect to which the inquiry is made is shown as debtor; and
- (c) whether, at the time mentioned in the certificate, there is registered a claim for lien or a change statement under the *Repair and Storage Liens Act, 1989* the registration of which is recorded in the central file of the registration system in which the name or number with respect to which the inquiry is made is shown in the designated place on the claim for lien or change statement as an owner or as a motor vehicle identification number, as the case may be, and, if there is, the registration number of it and any other recorded information.

1989, c. 17

Idem

(2) A certificate issued under subsection (1) is *prima facie* proof of the contents thereof.

Similar  
names

(3) A certificate issued under subsection (1) may include information relating to a registered financing statement or financing change statement recorded in the central file of the registration system which sets out in the designated place a debtor name or vehicle identification number which is similar, in the opinion of the registrar, to the name or number with respect to which the inquiry is made.

Certified  
copies

(4) Upon the request of any person and upon payment of the prescribed fee, the registrar shall furnish the person with a



certified copy of a registered financing statement or a registered financing change statement.

(5) A certified copy furnished under subsection (4) is *prima facie* proof of the contents of the document so certified. *Idem*  
R.S.O. 1980, c. 375, s. 44, *amended*.

**44.**—(1) The account in the Consolidated Revenue Fund known as “The Personal Property Security Assurance Fund” is hereby continued. *Assurance Fund*

(2) The prescribed portion of the fees received under this Act shall be paid into the Assurance Fund. *Idem*  
R.S.O. 1980, c. 375, s. 45 (1), *amended*.

(3) Interest shall be credited to the Assurance Fund out of the Consolidated Revenue Fund at a rate to be determined from time to time by the Lieutenant Governor in Council, and such interest shall be made up at the close of each fiscal year upon the balance in the Assurance Fund at the end of the previous calendar year. *Idem*  
R.S.O. 1980, c. 375, s. 45 (2).

(4) Any person who suffers loss or damage as a result of the person’s reliance upon a certificate of the registrar issued under section 43 that is incorrect because of an error or omission in the operation of the system of registration, recording and production of information under this Part or section 78 or under the *Repair and Storage Liens Act, 1989* is entitled to be paid compensation out of the Assurance Fund so far as the Assurance Fund is sufficient for that purpose, having regard to any claims which have been approved but have not been paid. *Entitlement to payment*  
1989, c. 17

(5) A person claiming to be entitled to payment of compensation out of the Assurance Fund shall file an application with the registrar, setting out the person’s name and address and particulars of the claim. *Claims*

(6) A claim against the Assurance Fund must be made within one year from the time that the loss or damage giving rise to the claim came to the claimant’s knowledge. *Idem*

(7) For the purposes of this section, where the holders of debt obligations issued, guaranteed or provided for under a security agreement are represented by a trustee or other person and the trustee or other person has relied upon a certificate of the registrar issued under section 43, all of the holders of the debt obligations shall be deemed to have relied on the certificate, and where a claim is made against the Assurance *Idem*

Fund, it shall be made by the trustee or other person on behalf of all the holders of such obligations.

Duty of  
registrar

(8) The registrar shall determine a claim against the Assurance Fund within ninety days of receiving an application for compensation and,

- (a) where the registrar determines that the claim should not be paid, the registrar shall forthwith advise the claimant of the decision; or
- (b) where the registrar determines that the claimant is entitled to a payment out of the Assurance Fund, the registrar shall make an offer of settlement in satisfaction of the claim,

and the decision or offer of settlement shall be deemed to be confirmed thirty days after the mailing thereof to the claimant unless the claimant requests a hearing under subsection (9).

Hearing

R.S.O. 1980,  
c. 230

(9) Where the registrar makes a decision under clause (8) (a) or an offer of settlement under clause (8) (b) that is for less than the full amount of the claim, the claimant, within thirty days from the day that the decision or offer is mailed to the claimant, may request the Director of Titles appointed under the *Land Titles Act* to hold a hearing to determine the claimant's entitlement to compensation and the request shall be in writing.

Idem

(10) As soon as possible after receiving a request under subsection (9), the Director of Titles or, where a person has been appointed under subsection (11), the person so appointed shall hold a hearing and decide the claimant's entitlement to compensation and, if he or she considers it appropriate, award costs.

Delegation

(11) The Director of Titles may appoint a person to act on his or her behalf in the hearing of a claim for compensation under this section.

Confirmation  
of decision

(12) A decision under subsection (10) shall be deemed to be confirmed at the expiration of thirty days from the date of the mailing of the decision to the claimant, unless a notice of an application under subsection (14) is served on the Director of Titles within that time.

Application  
to District  
Court

(13) Where the registrar fails to determine a claim for compensation under subsection (8) within ninety days, the District Court, on the application of the claimant made within sixty



days of the expiry of the ninety-day period, may order the payment of such compensation as is set out in the order.

(14) Where the claimant is dissatisfied with a decision under subsection (10), the District Court, on the application of the claimant made within thirty days of the mailing of the decision to the claimant, may order that the decision under subsection (10) be set aside and may order the payment of such compensation as may be set out in the order. Idem

(15) When an offer of settlement has been accepted or the time for an application under subsection (13) or (14) has expired or, where an application has been made, it is disposed of and it is finally determined that the claimant is entitled to payment of compensation out of the Assurance Fund, the registrar shall certify to the Treasurer of Ontario the sum found to be payable, including any costs awarded to the claimant, and the Treasurer shall pay the sum to the claimant out of the Assurance Fund. Payment

(16) Where compensation is paid to a claimant under this section, the registrar is subrogated to the rights of the claimant to the amount so paid against any person indebted to the claimant and whose debt to the claimant was the basis of the loss or damage in respect of which the claimant was paid, and the registrar may enforce those rights by action in court or otherwise in the name of Her Majesty in right of Ontario. Subrogation

(17) The registrar may require a claimant to exhaust the claimant's remedies against the collateral, the debtor and any guarantor and, where the registrar does so, the Assurance Fund is liable for the reasonable costs of the claimant, including solicitor and client costs. Action by claimant

(18) No action or other proceeding for damages shall be instituted against the Crown with respect to any matter in relation to which a claim against the Assurance Fund has been filed. Protection from liability

(19) No claim shall be filed against the Assurance Fund with respect to any matter in relation to which an action or other proceeding for damages has been commenced in any court against the Crown. Idem

(20) The maximum amount that may be paid out of the Assurance Fund with respect to claims related to any one security agreement shall not exceed \$1,000,000 in total. Maximum payable from Assurance Fund

(21) If the total of all claims against the Assurance Fund in respect of a security agreement exceeds \$1,000,000, payments Idem



to claimants shall be made in accordance with the ratio that the amount of the claimant's loss bears to the total amount of the losses of all claimants. *New.*

Registration  
of financing  
statement

**45.—**(1) In order to perfect a security interest by registration under this Act, a financing statement shall be registered. R.S.O. 1980, c. 375, s. 47 (1), *amended.*

Consumer  
goods

(2) Where the collateral is consumer goods, the financing statement referred to in subsection (1) shall not be registered before the security agreement is signed by the debtor and, where a financing statement is registered in contravention of this subsection, the registration of the financing statement does not constitute registration or perfection under this Act.

Collateral  
other than  
consumer  
goods

(3) Where the collateral is not consumer goods, the financing statement referred to in subsection (1) may be registered before or after the security agreement is signed by the debtor.

Subsequent  
security  
agreements

(4) Except where the collateral is consumer goods, one financing statement may perfect one or more security interests created or provided for in one or more security agreements between the parties. *New.*

Place of  
registration

**46.—**(1) A financing statement or financing change statement to be registered under this Act may be tendered for registration,

(a) by delivery to any branch office; or

(b) by mail addressed to an address fixed by the regulations. R.S.O. 1980, c. 375, s. 46, *amended.*

Form

(2) Every financing statement and financing change statement to be registered under this Act shall be in the prescribed form.

Classification  
of collateral

(3) Except with respect to rights to proceeds, where a financing statement or financing change statement sets out a classification of collateral and also contains words that appear to limit the scope of the classification, then, unless otherwise indicated in the financing statement or financing change statement, the secured party may claim a security interest perfected by registration only in the class as limited. *New.*

Errors, etc.

(4) A financing statement or financing change statement is not invalidated nor is its effect impaired by reason only of an error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by

the error or omission. R.S.O. 1980, c. 375, ss. 4, 47 (5), *amended*.

(5) Registration of a financing statement or financing change statement, Effect of registration

(a) does not constitute constructive notice or knowledge to or by third parties of the existence of the financing statement or financing change statement or of the contents thereof; and

(b) does not create a presumption that this Act applies to the transaction to which the registration relates.

(6) Where a financing statement or financing change statement is registered, the secured party shall deliver to the debtor within thirty days after the date of registration, Copy to debtor

(a) a copy of the registered financing statement or financing change statement; or

(b) a copy of a verification statement in the prescribed form.

(7) Where the secured party without reasonable excuse fails to deliver a copy required under subsection (6), the secured party shall pay \$500 to the debtor which sum is recoverable in the Provincial Court (Civil Division). *New*. Penalty

**47.—**(1) A financing change statement may be registered where a security interest is perfected by registration and the secured party has assigned the secured party's interest in all or part of the collateral. R.S.O. 1980, c. 375, s. 48 (1), *amended*. Assignment of security interest

(2) Where a security interest has not been perfected by registration and the secured party has assigned the secured party's interest, a financing statement referred to in section 46 may be registered, Idem

(a) naming the assignor as the secured party and subsection (1) applies; or

(b) naming the assignee as the secured party and subsection (1) does not apply. R.S.O. 1980, c. 375, s. 48 (2), *amended*.

(3) Upon the registration of the financing change statement under subsection (1) or the financing statement under sub- Idem

section (2), the assignee becomes a secured party of record. R.S.O. 1980, c. 375, s. 48 (3).

Transfer of  
collateral

**48.—**(1) Where a security interest is perfected by registration and the debtor, with the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected fifteen days after the transfer is made unless the secured party registers a financing change statement within such fifteen days. R.S.O. 1980, c. 375, s. 49 (1), *amended*.

Idem

(2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty days after the later of,

- (a) the transfer, if the secured party had prior knowledge of the transfer and if the secured party had, at the time of the transfer, the information required to register a financing change statement; and
- (b) the day the secured party learns the information required to register a financing change statement,

unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days.

Change of  
debtor name

(3) Where a security interest is perfected by registration and the secured party learns that the name of the debtor has changed, the security interest in the collateral becomes unperfected thirty days after the secured party learns of the change of name and the new name of the debtor unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days. R.S.O. 1980, c. 375, s. 49 (2), *amended*.

Transferee in  
possession

(4) Where the debtor's interest in all or part of the collateral is transferred by the debtor without the consent of the secured party and there is one or more subsequent transfers of the collateral without the consent of the secured party before the secured party learns of the name of the transferee who has possession of the collateral, the secured party shall be deemed to have complied with subsection (2) if the secured party registers a financing change statement within thirty days of learning of the name of the transferee who has possession of the collateral and the information required to register a financing change statement and the secured party need not register financing change statements with respect to any intermediate transferee. *New*.



(5) A security interest that becomes unperfected under subsection (1), (2) or (3) may be perfected again by registering a financing change statement at any time during the remainder of the unexpired registration period of the financing statement or any renewal thereof. R.S.O. 1980, c. 375, s. 49 (3), *amended*.

Financing  
change  
statement

(6) Where the Registrar General notifies the registrar that a debtor has changed his or her name and provides the registrar with particulars of a registration under this Act in which the debtor's former name appears as debtor, the registrar shall amend the debtor's name as shown in the central file of the registration system related to the registration.

Notification  
by Registrar  
General

(7) Subsection (3) does not apply if the registrar, under subsection (6), amends the central file of the registration system,

Idem

- (a) before the secured party learns of the new name of the debtor; or
- (b) within thirty days of the day the secured party learns of the new name of the debtor.

(8) If the registrar, under subsection (6), amends the central file of the registration system more than thirty days after the day the secured party learns of the new name of the debtor, the registrar's amendment shall be deemed to be a financing change statement registered by the secured party at the time the amendment was made. *New*.

Idem

**49.** A financing change statement may be registered at any time during the registration period of a financing statement,

Amendments

- (a) to correct an error or omission in the registered financing statement or any financing change statement related thereto; or
- (b) to amend the registered financing statement or any financing change statement related thereto where the amendment is not otherwise provided for in this Part. *New*.

**50.** Where a security interest is perfected by registration and the interest of the secured party has been subordinated by the secured party to any other security interest in the collateral, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective. R.S.O. 1980, c. 375, s. 51.

Subordi-  
nation of  
security  
interest

Registration  
period

**51.**—(1) A financing statement may be registered for a perpetual period or for such period of years as is set out in the financing statement.

Change of  
registration  
period

(2) The registration period of a financing statement may be reduced by the registration of a financing change statement under section 49 or extended by the registration of a financing change statement under subsection 52 (1).

Duration of  
registration  
period

(3) The registration period for a financing statement begins with the time assigned to its registration by the registrar or branch registrar and ends on the earlier of,

(a) the time the registration is discharged; or

(b) at the end of the registration period as set out in the financing statement or as changed by subsequent financing change statements.

Effective  
period

(4) A financing statement is effective only during its registration period.

Consumer  
goods

(5) Despite subsection (1), a financing statement that indicates that the collateral is or includes consumer goods shall be deemed to have a registration period of five years, unless a shorter registration period is indicated on the financing statement or unless the registration period is extended by the registration of a financing change statement under subsection 52 (1).

Idem

(6) Every financing change statement extending the registration period of a financing statement described in subsection (5) shall be deemed to extend the registration period for a five year period that begins at the time of its registration unless a shorter extension is indicated on the financing change statement.

Renewal of  
registration

**52.**—(1) Where a security interest has been perfected by registration, the registration may be extended before the registration ceases to be effective by the registration of a financing change statement.

Reperfection

(2) Where a security interest has been perfected by registration and the registration has ceased to be effective, the security interest may be perfected again by the registration of a financing statement. R.S.O. 1980, c. 375, s. 52, *amended*.

Financing  
change  
statement

**53.** The registration of a financing change statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective so long as the registra-

tion of the financing statement to which it relates is effective.  
*New.*

**54.**—(1) A notice of security interest, in the prescribed form, may be registered in the proper land registry office, where, Notice in land registry office

- (a) the collateral is or includes fixtures or goods that may become fixtures or crops, or minerals or hydrocarbons to be extracted, or timber to be cut; or
- (b) the security interest is a security interest in a right to payment under a lease, mortgage or charge of real property to which this Act applies. 1981, c. 58, s. 4.

(2) Where the collateral is consumer goods, a notice registered under clause (1) (a) or an extension notice registered under subsection (3), as the case may be, shall set out an expiration date, which date shall not be later than the fifth anniversary of the date of registration and the notice or extension notice is effective until the end of the expiration date. Consumer goods, registration period

(3) A registration to which subsection (2) applies may be extended before the end of the registration period by the registration of an extension notice. Idem

(4) A notice registered under subsection (1) may be discharged or partially discharged by a certificate in the prescribed form and the certificate may be registered in the proper land registry office. Discharge

(5) Where a notice has been registered under subsection (1), every person dealing with the collateral shall be deemed for the purposes of subsection 34 (2) to have knowledge of the security interest. R.S.O. 1980, c. 375, s. 54 (2, 3), *amended*. Effect of registration

(6) Where the collateral is consumer goods and the expiration date set out in a notice registered under clause (1) (a) has passed and an extension notice has not been registered or has expired, the land described in the notice is not affected by any claim under the notice but this subsection does not prevent the registration of a new notice under clause (1) (a). *New.* Loss of claim

**55.** A registration may be discharged or partially discharged by the registration of a financing change statement discharging or partially discharging the registration. R.S.O. 1980, c. 375, s. 55 (1), *amended*. Discharge or partial discharge of registration



Demand for  
discharge,  
where  
security  
interest  
existed

**56.—(1)** Where a financing statement or notice of security interest is registered under this Act, and,

- (a) all the obligations under a security agreement to which it relates have been performed; or
- (b) it is agreed to release part of the collateral covered by a security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations,

any person having an interest in the collateral covered by the security agreement may deliver a written notice to the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge or partial discharge referred to in subsection 54 (4), or both, and the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge or partial discharge, or both, as the case may be.

Idem, where  
no security  
interest  
acquired

(2) Where a financing statement or notice of security interest is registered under this Act and the person named in the financing statement or notice as the secured party has not acquired a security interest in the property to which the financing statement or notice relates, any person having an interest in the property may deliver a written notice to the person named as the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54 (4), or both, and the person named as the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge, or both, as the case may be.

Interpretation

(3) For the purposes of subsections (4) and (5), “secured party” includes a person named in a financing statement or notice of security interest as the secured party to whom subsection (2) applies.

Failure to  
deliver

(4) Where the secured party, without reasonable excuse, fails to deliver the financing change statement or certificate of discharge or partial discharge, or both, as the case may be, required under subsection (1) or (2) within ten days after receipt of a demand therefor, the secured party shall pay \$500 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

(5) Upon application to the District Court, the court may,

Security or  
payment into  
court

- (a) allow security for or payment into court of the amount claimed by the secured party and such costs as the court may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement or notice of security interest; or
- (b) order upon any ground that the court considers proper that,
  - (i) the registrar amend the information recorded in the central file of the registration system to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be, or
  - (ii) the land registrar delete any entry in the books of the land registry office related to the notice of security interest or that the land registrar amend the books of the land registry office to indicate that the security interest has been discharged or partially discharged, as the case may be.

(6) Where the person receiving a notice under clause (1) (a) did not have a security interest in the collateral immediately before all the obligations under the security agreement to which it relates were performed, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse, the person fails to do so or the answer is incomplete or incorrect, the person shall pay \$500 to the person making the demand and any damages resulting from the failure which sum and damages are recoverable in any court of competent jurisdiction. *New.*

Successors in  
interest

**57.—**(1) Within thirty days after all the obligations under a security agreement that creates a security interest in consumer goods have been performed or forgiven, the secured party shall register,

Consumer  
goods, duty  
of secured  
party to  
register or  
provide  
discharge

- (a) a financing change statement discharging the registration if the security interest has been perfected by registration; and
- (b) a certificate of discharge, if a notice of security interest has been registered under section 54.

Failure to  
register

(2) Where a secured party fails to comply with subsection (1), the secured party shall, on written notice from the debtor, pay the debtor \$500 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

Rights not  
affected

(3) Subsections (1) and (2) do not affect any rights under section 56 of the debtor or of any other person having an interest in the collateral. *New.*

## PART V

### DEFAULT—RIGHTS AND REMEDIES

Rights and  
remedies  
cumulative

**58.** The rights and remedies mentioned in this Part are cumulative. R.S.O. 1980, c. 375, s. 56 (1).

Rights and  
remedies of  
secured party

**59.—**(1) Where the debtor is in default under a security agreement, the secured party has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and, when in possession of the collateral, the rights, remedies and duties provided in section 17.

Enforcement  
by secured  
party

(2) The secured party may enforce a security interest by any method permitted by law and, if the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the goods covered thereby, and any method of enforcement that is permitted with respect to the documents of title is also permitted, with necessary modifications, with respect to the goods covered thereby.

Rights and  
remedies of  
debtor

(3) Where the debtor is in default under a security agreement, the debtor has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and in section 17.

Determi-  
nation of  
standards

(4) Subject to subsection (5), a security agreement may set out the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as those standards are not manifestly unreasonable having regard to the nature of the rights and duties.

Non-waiver  
of rights and  
duties

(5) Despite subsection (1), the provisions of section 17, and sections 63 to 66, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied except as provided by this Act. R.S.O. 1980, c. 375, s. 56 (2-5), *amended.*



(6) Where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or may proceed as to both the real and the personal property in accordance with the secured party's rights, remedies and duties in respect of the real property, with all necessary modifications, as if the personal property were real property, in which case this Part does not apply. R.S.O. 1980, c. 375, s. 56 (6).

Where agreement covers both real and personal property

(7) A security agreement does not merge merely because the claim has been reduced to judgment by the secured party or because the secured party has levied execution thereunder on the collateral. R.S.O. 1980, c. 375, s. 56 (7), *amended*.

No merger in judgment

**60.—**(1) Nothing in this Act prevents,

Receiver, receiver and manager

- (a) the parties to a security agreement from agreeing that the secured party may appoint a receiver or receiver and manager and, except as provided by this Act, determining the rights and duties of the receiver or receiver and manager by agreement; or
- (b) a court of competent jurisdiction from appointing a receiver or receiver and manager and determining rights and duties of the receiver or receiver and manager by order.

(2) Upon application of the secured party, the debtor or any other person with an interest in the collateral, and after notice to any other person that the court directs, the Supreme Court, with respect to a receiver or receiver and manager however appointed, may,

Idem

- (a) remove, replace or discharge the receiver or receiver and manager;
- (b) give directions on any matter relating to the duties of the receiver or receiver and manager;
- (c) approve the accounts and fix the remuneration of the receiver or receiver and manager;
- (d) make any order with respect to the receiver or receiver and manager that it thinks fit in the exercise of its general jurisdiction over a receiver or receiver and manager. *New.*

**61.—**(1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled,

Collection rights of secured party

- (a) to notify any person obligated on an account or on chattel paper or any obligor on an instrument to make payment to the secured party whether or not the assignor was theretofore making collections on the collateral; and
- (b) to take control of any proceeds to which the secured party is entitled under section 25.

Idem

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from a person obligated on an account or on chattel paper or an obligor on an instrument shall proceed in a commercially reasonable manner and the secured party may deduct the reasonable expenses of realization from the collections. R.S.O. 1980, c. 375, s. 57, *amended*.

Possession  
upon default

**62.** Upon default under a security agreement,

- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law;
- (b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may, in a reasonable manner, render such equipment unusable without removal thereof from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of such equipment; and
- (c) the secured party may dispose of collateral on the debtor's premises in accordance with section 63. R.S.O. 1980, c. 375, s. 57, *amended*.

Disposal of  
collateral

**63.—**(1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to,

- (a) the reasonable expenses of the secured party, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement, any other reasonable expenses incurred by the secured party; and

- (b) the satisfaction of the obligation secured by the security interest of the party making the disposition,

and the surplus, if any, shall be dealt with in accordance with section 64. R.S.O. 1980, c. 375, s. 59 (1), *amended*.

(2) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to subsection (4), may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (3).

Methods of  
disposition

(3) Subject to subsection 65 (1), the secured party may delay disposition of all or part of the collateral for such period of time as is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (4), *amended*.

Secured  
party's right  
to delay  
disposition of  
collateral

(4) Subject to subsection (6), the secured party shall give not less than fifteen days notice in writing of the matters described in subsection (5) to,

Notice  
required

- (a) the debtor who owes payment or performance of the obligation secured;
- (b) every person who is known by the secured party, before the date that the notice is served on the debtor, to be an owner of the collateral or an obligor who may owe payment or performance of the obligation secured;
- (c) every person who has a security interest in the collateral and whose interest,
  - (i) was perfected by possession, the continuance of which was prevented by the secured party who has taken possession of the collateral, or
  - (ii) is perfected by registration before the date the notice is served on the debtor;
- (d) every person with an interest in the collateral who has delivered a written notice to the secured party of the interest in the collateral before the date that the notice is served on the debtor.

(5) The notice mentioned in subsection (4) shall set out,

Idem

- (a) a brief description of the collateral;



- (b) the amount required to satisfy the obligation secured by the security interest;
- (c) the amount of the applicable expenses referred to in clause (1) (a) or, in a case where the amount of such expenses has not been determined, a reasonable estimate thereof;
- (d) a statement that upon receipt of payment the payor will be credited with any rebates or allowances to which the debtor is entitled by law or under the agreement;
- (e) a statement that upon payment of the amounts due under clauses (b) and (c), any person entitled to receive notice may redeem the collateral;
- (f) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and
- (g) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.

Idem

(6) If the notice to the debtor under clause (4) (a) is mailed, then the relevant date for the purpose of clause (4) (b), subclause (4) (c) (ii) and clause (4) (d) shall be the date of mailing and not the date of service.

Notice not  
required

(7) The notice mentioned in subsection (4) is not required where,

- (a) the collateral is perishable;
- (b) the secured party believes on reasonable grounds that the collateral will decline speedily in value;
- (c) the collateral is of a type customarily sold on a recognized market;
- (d) the cost of care and storage of the collateral is disproportionately large relative to its value;
- (e) for any reason not otherwise provided for in this subsection, the District Court, on an application made without notice to any other person, is satisfied that a notice is not required;

- (f) after default, every person entitled to receive a notice of disposition under subsection (4) consents in writing to the immediate disposition of the collateral; or
- (g) a receiver and manager disposes of collateral in the course of the debtor's business. *New.*

(8) The secured party may buy the collateral or any part thereof only at a public sale unless the District Court, on application, orders otherwise. R.S.O. 1980, c. 375, s. 59 (7), *amended.* Secured party's right to purchase collateral

(9) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if the disposition is made to a buyer who buys in good faith for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral. Effect of disposition of collateral

(10) Where collateral is disposed of by a secured party after default otherwise than in accordance with this section, then, Idem

- (a) in the case of a public sale, if the buyer has no knowledge of any defect in the sale and if the buyer does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
- (b) in any other case, if the buyer acts in good faith,

the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a buyer for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(11) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to the secured party's rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral. R.S.O. 1980, c. 375, s. 59 (8-10). Certain transfers of collateral

**64.—**(1) Where the secured party has dealt with the collateral under section 61 or has disposed of it, the secured party shall account for and, subject to subsection (4), pay over any surplus consecutively to, Distribution of surplus

- (a) any person who has a security interest in the collateral that is subordinate to that of the secured party and whose interest,
  - (i) was perfected by possession, the continuance of which was prevented by the secured party who took possession of the collateral, or
  - (ii) was, immediately before the dealing or disposition, perfected by registration;
- (b) any other person with an interest in the surplus who has delivered a written notice to the secured party of the interest before the distribution of the proceeds; and
- (c) the debtor or any other person who is known by the secured party to be an owner of the collateral,

but the priority of the claim of any person referred to in clauses (a), (b) and (c) against the recipient of the surplus shall not be prejudiced thereby. R.S.O. 1980, c. 375, s. 60, *amended*.

Proof of  
interest

(2) The secured party may require any person mentioned in subsection (1) to furnish proof of that person's interest, and, unless the proof is furnished within ten days after demand by the secured party, the secured party need not pay over any portion of the surplus to the person.

Deficiency

(3) Unless otherwise agreed in the security agreement, or unless otherwise provided under this or any other Act, the debtor is liable for any deficiency.

Payment into  
court

(4) Where there is a question as to who is entitled to receive payment under subsection (1), the secured party may pay the surplus into the District Court and the surplus shall not be paid out except upon an application under section 67 by a person claiming an entitlement thereto. *New*.

Compulsory  
disposition of  
consumer  
goods

**65.—**(1) Where a security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid at least 60 per cent of the indebtedness secured and has not signed, after default, a statement renouncing or modifying the debtor's rights under this Part, the secured party who has taken possession of the collateral shall, within ninety days after taking possession, dispose of or contract to dispose of the collateral under section 63, and, if the secured party fails to do so, the debtor may proceed under section 67 or in an



action for damages or loss sustained. R.S.O. 1980, c. 375, s. 61 (1).

(2) In any case other than that mentioned in subsection (1), a secured party may, after default, propose to accept the collateral in satisfaction of the obligation secured and shall serve a notice of the proposal on the persons mentioned in clauses 63 (4) (a) to (d). R.S.O. 1980, c. 375, s. 61 (2), *amended*. Acceptance  
of collateral

(3) If any person entitled to notification under subsection (2), whose interest in the collateral would be adversely affected by the secured party's proposal, delivers to the secured party a written objection within thirty days after service of the notice, the secured party shall dispose of the collateral in accordance with section 63. R.S.O. 1980, c. 375, s. 61 (3), *part, amended*. Objection

(4) The secured party may require any person who has made an objection to the proposal to furnish proof of that person's interest in the collateral and, unless the person furnishes the proof within ten days after demand by the secured party, the secured party may proceed as if no objection had been made. Proof of  
interest

(5) Upon application to the District Court by the secured party, and after notice to every person who has made an objection to the proposal, the court may order that an objection to the proposal of the secured party is ineffective because, Application  
to judge

(a) the person made the objection for a purpose other than the protection of the person's interest in the collateral or in the proceeds of a disposition of the collateral; or

(b) the fair market value of the collateral is less than the total amount owing to the secured party and the estimated expenses recoverable under clause 63 (1) (a). *New*.

(6) If no effective objection is made, the secured party is, at the expiration of the thirty-day period mentioned in subsection (3), deemed to have irrevocably elected to accept the collateral in full satisfaction of the obligation secured, and thereafter is entitled to the collateral free from all rights and interests therein of any person entitled to notification under subsection (2) whose interest is subordinate to that of the secured party and who was served with such notice. R.S.O. 1980, c. 375, s. 61 (3), *part, amended*. Foreclosure

Effect of  
disposition

(7) When a secured party disposes of the collateral after expiration of the period mentioned in subsection (6) to a buyer who buys in good faith for value and who takes possession of it or, in the case of an intangible, receives an assignment of it, the buyer acquires the collateral free from any interest of the secured party and the debtor and free from every interest subordinate to that of the secured party, whether or not the requirements of this section have been complied with by the secured party. *New.*

Redemption  
of collateral

**66.**—(1) At any time before the secured party, under section 63, has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, any person entitled to receive notice under subsection 63 (4) may, unless the person has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party, but if more than one person elects to redeem, the priority of their rights to redeem shall be the same as the priority of their respective interests. R.S.O. 1980, c. 375, s. 62, *amended*.

Consumer  
goods, re-  
instatement

(2) Where the collateral is consumer goods, at any time before the secured party, under section 63 has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, the debtor may reinstate the security agreement by paying,

- (a) the sum actually in arrears, exclusive of the operation of any acceleration clause, and by curing any other default which entitles the secured party to dispose of the collateral; and
- (b) a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party.

Limitation

(3) The right to reinstate under subsection (2) may not be exercised more than once during the term of the security agreement, unless the District Court, on the application of the debtor, orders otherwise. *New.*

## PART VI

### MISCELLANEOUS

Court orders  
and  
directions

**67.**—(1) Upon application to the Supreme Court or to the District Court by a debtor, a creditor of a debtor, a secured

party, an obligor who may owe payment or performance of the obligation secured or any person who has an interest in collateral which may be affected by an order under this section, the court may,

- (a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with Part V, section 17 or subsection 34 (3) or 35 (4);
- (b) give directions to any party regarding the exercise of the party's rights or the discharge of the party's obligations under Part V, section 17 or subsection 34 (3) or 35 (4);
- (c) make any order necessary to determine questions of priority or entitlement in or to the collateral or its proceeds;
- (d) relieve any party from compliance with the requirements of Part V, section 17 or subsection 34 (3) or 35 (4), but only on terms that are just for all parties concerned;
- (e) make any order necessary to ensure protection of the interests of any person in the collateral, but only on terms that are just for all parties concerned; and
- (f) make an order requiring a secured party to make good any default in connection with the secured party's custody, management or disposition of the collateral of the debtor or to relieve the secured party from any default on such terms as the court considers just, and to confirm any act of the secured party. R.S.O. 1980, c. 375, s. 63 (1), *amended*.

(2) Where a person fails to discharge any duties or obligations imposed upon the person by Part V, section 17 or subsection 34 (3) or 35 (4), the person to whom the duty or obligation is owed has a right to recover compensation for any loss or damage suffered because of the failure and which was reasonably foreseeable, and, where the collateral is consumer goods, the debtor has a right to recover in any event an amount equal to the greater of \$500 or the actual loss or damages. R.S.O. 1980, c. 375, s. 63 (2), *amended*.

Compensation for loss or damages

(3) Except as otherwise provided in this Act, any provision in any security agreement which purports to exclude any duty or obligation imposed under this Act or to exclude or limit lia-

Void provisions



bility for failure to discharge duties or obligations imposed by this Act is void. *New.*

Removal into  
Supreme  
Court

(4) Where an application under subsection (1) is made to the District Court, a respondent, by notice served on the applicant and on the other respondents, if any, and filed with proof of service with the local registrar of the District Court at least two days before the hearing date of the application, may require the application to be removed into the Supreme Court. R.S.O. 1980, c. 375, c. 63 (3), *amended*.

Transmission  
of papers

(5) Upon the filing of the notice with proof of service, the local registrar of the District Court shall forthwith transmit the papers to the local registrar of the Supreme Court in the county or district in which the application was commenced, and the application shall continue as if it had commenced in the Supreme Court. R.S.O. 1980, c. 375, s. 63 (4, 5), *amended*.

Service of  
notices, etc.

**68.**—(1) Where under this Act, a notice or any other document may be or is required to be given or delivered to or served on,

- (a) a secured party named in a registered financing statement or financing change statement, the notice or document may be given to or served on the secured party by personal service or by registered mail at the most recent address of the secured party as shown in the financing statement or financing change statement; and
- (b) a debtor by a secured party, the notice or document may be given to or served on the debtor by personal service or by registered mail at the last address of the debtor known to the secured party.

Idem

(2) Where under this Act, a notice or any document may be or is required to be given or delivered to or served on a person, other than a person to whom subsection (1) applies, the notice or document may be given to or served on,

- (a) an individual, by personal service or by registered mail addressed to the individual at his or her residence or place of business and, if the individual has more than one residence or place of business, at any one of the residences or places of business;
- (b) a partnership,
  - (i) by personal service,

- (A) upon any one or more of the partners,  
or
- (B) upon any person having control or management of the partnership business at the principal place of business of the partnership, or
- (ii) by registered mail addressed to,
  - (A) the partnership,
  - (B) any one or more of the general partners,
  - (C) any person having control or management of the partnership business,at the principal address of the partnership;
- (c) a municipal corporation by delivery or registered mail addressed to its head of council or chief administrative officer at its principal office;
- (d) a local board, as defined in the *Municipal Affairs Act*, by delivery or registered mail addressed to its chairman or chief administrative officer at its principal office; R.S.O. 1980,  
c. 303
- (e) a corporation, other than a municipal corporation or a local board thereof,
  - (i) by serving any officer, director, or any agent thereof, or the manager or person in charge of any office or other place where the corporation carries on business, or
  - (ii) by registered mail addressed to the address of its registered or head office;
- (f) upon Her Majesty in right of Ontario, unless the regulations otherwise provide, by delivery or registered mail addressed to the registrar at the central office of the registration system.

(3) Where an individual, partnership or body corporate resides or has its principal office or its registered or head office out of Ontario but is carrying on business in Ontario, a notice or document referred to in subsection (2) may be given, delivered or served by serving any person carrying on the business in Ontario and in the case of an extra-provincial com-

Out of  
province

pany, by serving the attorney for service in Ontario and such service may be by personal service or by registered mail at the address of the person or attorney.

Service by  
registered  
mail

(4) A notice or document given or served by registered mail shall be deemed to have been given, delivered or served when the addressee actually receives the notice or document, or, except for the purposes of subsection 33 (1), upon the expiry of ten days after the day of registration, whichever is earlier.

Court  
documents

(5) Any notice or other document to be served on any person in relation to a proceeding in a court shall be served in accordance with the rules of the court and subsections (1) to (4) do not apply to any such notice. *New.*

Knowledge  
and notice

**69.** For the purposes of this Act, a person learns or knows or has notice or is notified when service is effected in accordance with section 68 or the regulations or when,

- (a) in the case of an individual, information comes to his or her attention under circumstances in which a reasonable person would take cognizance of it;
- (b) in the case of a partnership, information has come to the attention of one or more of the general partners or of a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- (c) in the case of a corporation, other than a municipal corporation or local board thereof, information has come to the attention of a senior employee of the corporation with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it. *New.*

Extension or  
abridgment  
of time

**70.** Where in this Act, other than in sections 5, 6, 7 and 12 and in Parts III and IV and in this Part, a time prescribed within which or before which any act or thing must be done, the District Court, on an application without notice to any other person, may extend or abridge the time for compliance on terms that the court considers just. *New.*

Destruction  
of books,  
etc.

**71.—(1)** The registrar may authorize the destruction of books, documents, records or paper, including those related to a prior law as defined in Part VII,



- (a) that have been microfilmed; or
- (b) that in the registrar's opinion need not be preserved any longer. R.S.O. 1980, c. 375, s. 68 (1), *amended*.

(2) The registrar may remove from the central file of the registration system information related to a financing statement or financing change statement,

Removal of information from registration system

- (a) if the financing statement is no longer effective;
- (b) upon the receipt of a financing change statement discharging the registration of a financing statement;
- (c) upon receipt of a court order requiring the registrar to amend the information recorded in the central file to indicate the discharge of a financing statement or a financing change statement. R.S.O. 1980, c. 375, s. 68 (2), *amended*.

(3) The registrar, upon notice to the secured party, may remove from the central file of the registration system information related to a financing change statement if,

Idem

- (a) it does not set out the correct registration or file number of the financing statement or financing change statement to which it relates; or
- (b) it does not set out the name of the debtor as that name is set out in the financing statement or financing change statement to which it relates.

(4) Where the destruction of a document has been authorized under subsection (1), the registrar, instead of destroying the document, may release the document to the secured party or the secured party's agent. *New*.

Idem

**72.** Except in so far as they are inconsistent with the express provisions of this Act, the principles of law and equity, including the law merchant, the law relating to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake and other validating or invalidating rules of law, shall supplement this Act and shall continue to apply. *New*.

Application of principles of law and equity

**73.** Where there is conflict between a provision of this Act and a provision of the *Consumer Protection Act*, the provision of the *Consumer Protection Act* prevails and, where there is

Conflict with other Acts  
R.S.O. 1980, c. 87

R.S.O. 1980,  
c. 87

conflict between a provision of this Act and a provision of any general or special Act, other than the *Consumer Protection Act*, the provision of this Act prevails. R.S.O. 1980, c. 375, s. 69.

Regulations

**74.** The Lieutenant Governor in Council may make regulations,

- (a) designating branch offices;
- (b) prescribing the duties of the registrar and branch registrars;
- (c) prescribing business hours for the offices of the registration system or any of them;
- (d) respecting the registration system and searches thereof;
- (e) requiring the payment of fees and prescribing the amounts thereof;
- (f) prescribing the amount of any charge to which a secured party is entitled for any statement or copy provided pursuant to section 18;
- (g) prescribing forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;
- (h) requiring that the forms to be used shall be those provided or approved by the registrar;
- (i) governing the time assigned to the registration of financing statements and financing change statements;
- (j) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing change statement or in the recording or production of information by the registrar;
- (k) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;
- (l) prescribing additional methods of serving notices and other documents for the purposes of section 68 and prescribing methods of serving notices and

other documents on persons not referred to in section 68;

- (m) prescribing the portion of the fees received under this Act that shall be paid into The Personal Property Security Assurance Fund;
- (n) defining “motor vehicle”;
- (o) prescribing a lexicon of French-English terms to be used in connection with prescribed forms and deeming the corresponding forms of expression in the lexicon to have the same effect in law. R.S.O. 1980, c. 375, s. 70 (1); 1981, c. 58, s. 5 (1), *amended*.

## PART VII

### APPLICATION, TRANSITION, AMENDMENTS, REPEALS, COMMENCEMENT

**75.** In this Part, “prior law” means,

Definition

- (a) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement was one to which *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act*, being chapters 33, 45 and 76, respectively, of the Revised Statutes of Ontario, 1970, or the predecessors thereof, applied;
- (b) the law related to a security agreement made before the day this section comes into force where the security agreement was one to which the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or predecessor thereof, applied;
- (c) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement is not a security agreement described in clause (a) or (b). *New*.

**76.**—(1) Except as otherwise provided in this Part, this Act applies, Application  
of Act

- (a) to every security agreement made on or after the day this section comes into force; and



- (b) to every security agreement made on or after the 1st day of April, 1976 if the security agreement was one to which the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, applied immediately before the repeal of that Act.

Idem

(2) Except as otherwise provided in this Part, this Act does not apply,

- (a) to a security agreement to which a prior law applied at the time of its making including any advance or extension of credit, delivery of goods or other event occurring pursuant thereto whether before or after this section comes into force; or
- (b) to a transfer of chattel paper or an account, other than a transfer of a book debt, made before the coming into force of this section which does not secure payment or performance of an obligation.

Saving

(3) This Act does not affect the rights acquired by any person from a judgment or order of any court given or made before the day this Act comes into force, or affect the outcome of any litigation commenced on or before that day.

Priority of  
interest  
under  
R.S.O. 1980,  
c. 375

(4) Priority between security interests under security agreements described in clause (1) (b) shall be determined in accordance with the law as it existed immediately before this section came into force if the security interests have been continuously perfected since this section came into force. *New.*

Chattel  
mortgages,  
etc., under  
prior law

**77.—**(1) Every security agreement to which the prior law as described in clause 75 (a) applied at the time of its making continues to have such force and effect as if the Acts referred to in that clause had not been repealed if the security interest was covered by an unexpired registration under the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, immediately before the coming into force of this section.

Idem

(2) Where a security interest under a security agreement described in subsection (1) was not covered under an unexpired registration immediately before the coming into force of this section, the security interest may be perfected by the registration of a financing statement.

Application  
of Part IV

(3) Part IV applies to the perfection, continuation of perfection and reperfecting of a security interest under a security agreement to which subsection (1) or (2) applies.

(4) Where before the coming into force of this section, a secured party under a security agreement to which the prior law as described in clause 75 (a) applied at the time of its making failed to register a financing change statement after learning of the transfer of collateral and the information required to register a financing change statement or after learning of the change of name and the new name of the debtor, the secured party shall register a financing change statement recording the transfer or the new name of the debtor, as the case may be, within twenty-four months of the coming into force of this section.

Where certain changes have not been recorded

(5) Where a secured party fails to register a financing change statement under subsection (4) by the end of the period referred to in that subsection, the security interest created by the security agreement shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the name of the transferee or the changed name of the debtor, as the case may be. *New.*

Effect of failure to comply

**78.**—(1) A mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, (collectively referred to in this section as the former Act) that was registered under the former Act before the coming into force of this section, continues to have such force and effect as if the former Act had not been repealed and except as provided in this section and sections 43 and 44, this Act does not apply to any such mortgage, charge or assignment.

Corporation securities

(2) Where a mortgage, charge or assignment, the registration of which was provided for in the former Act, was made before the coming into force of this section but was not registered under that Act,

Idem

- (a) this Act shall be deemed always to have applied to the mortgage, charge or assignment; and
- (b) the security interest created by the mortgage, charge or assignment may be perfected under this Act.

(3) The registrar shall, with respect to each mortgage, charge and assignment, and each assignment thereof, registered under the former Act for which no certificate of discharge has been registered as of the day this section comes

Entries in registration system



into force, enter into the central file of the registration system established for the purposes of this Act,

- (a) the name of the debtor as shown in the registration under the former Act;
- (b) the registration number under the former Act; and
- (c) the following notation:

This registration was made under the *Corporation Securities Registration Act* (R.S.O. 1980, c. 94) or a predecessor thereof. A copy of the instrument is available for inspection in the offices of the Ministry of Consumer and Commercial Relations located at .....  
(address of appropriate office)  
.....

Discharged  
registrations

(4) Mortgages, charges and assignments, and assignments thereof, registered under the former Act for which a certificate of discharge has been registered before the coming into force of this section shall not be entered into the registration system established for the purposes of this Act.

Registration  
period

(5) A registration entered into the central file of the registration system under subsection (3) expires when it is discharged in accordance with this section.

Change of  
name of  
debtor

(6) Where before the coming into force of this section and after the original registration under the former Act the debtor changed its name and the secured party learned of the change before the coming into force of this section, the secured party shall register a financing change statement recording the change of name within twenty-four months of the coming into force of this section.

Effect of  
failure to  
comply

(7) Where a secured party fails to register a financing change statement under subsection (6) by the end of the period referred to in that subsection, the security interest created by the mortgage, charge or assignment shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the changed name of the debtor.

Discharge

(8) A secured party may discharge in whole or in part a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under



subsection (3) by the registration of a financing change statement.

(9) The debtor or any person having an interest in the collateral may make an application to the District Court for an order discharging or partially discharging a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under subsection (3).

Order for  
discharge

(10) Upon hearing an application made under subsection (9) and upon being satisfied that no security interest was created or that the security interest is released or partially released, the court may order,

Idem

- (a) that the registration be discharged where no security interest was ever created or the security interest has been released; or
- (b) that a financing change statement be registered where the security interest is partially released.

(11) The registrar may remove from the registration system information related to a registration, upon receipt of,

Removal of  
information  
from  
registration  
system

- (a) a financing change statement under subsection (8) that wholly discharges the registration entered into the central file of the registration system under subsection (3); or
- (b) a certified copy of an order made under clause (10) (a).

(12) Subsection 30 (6) and sections 47, 48, 49 and 50, except subsections 48 (1) and (2), apply to the perfection, continuation of perfection and reperfecting of a security interest under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3).

Application  
of ss. 30 (6),  
47-50

(13) Where there is a default under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3), the secured party may elect to enforce the security agreement in accordance with Part V by stating in the notice referred to in subsection 63 (4) or 65 (2) that the secured party has elected to be bound by Part V.

Election re:  
enforcement  
of security  
agreements

(14) Subsections (6) and (12) do not apply so as to require a trustee under a trust indenture to file a financing change statement recording the change of a debtor's name unless after the coming into force of this section the trust indenture is amended. *New.*

Trust  
indentures

Saving,  
certain  
corporation  
securities

**79.**—(1) A mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, shall not be invalid by reason only that it was not registered under that Act, if the security interest created by the mortgage, charge or assignment was perfected by registration in compliance with the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, and the said *Personal Property Security Act* shall be deemed to have applied to the security interest so created from its creation and upon the coming into force of this Act, this Act applies to the security interest. 1981, c. 2, s. 1, *amended*.

Idem

(2) Subsection (1) applies even if after the perfection of a security interest by registration under the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, the mortgage, charge or assignment was registered under the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof. *New*.

Dual  
registration

(3) Despite subsections (1) and (2), where,

(a) a security agreement created or provided for both,

(i) a security interest in any class or classes of collateral and the security interest was a mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, and

(ii) a security interest in collateral other than collateral described in subclause (i) and the security interest was not a mortgage, charge or assignment, the registration of which was provided for in the said *Corporation Securities Registration Act*, or a predecessor thereof; and

(b) regardless of which occurred first,

(i) the mortgage, charge or assignment described in subclause (a) (i) was registered under the said *Corporation Securities Registration Act*, or a predecessor thereof, and

- (ii) a financing statement was registered under a predecessor of this Act in relation to the security interest described in subclause (a) (ii) and the financing statement and the financing change statements, if any, in relation thereto, do not claim a security interest in the collateral described in subclause (a) (i),

the said *Corporation Securities Registration Act* and this Act, except subsections (1) and (2) applies to the security interest described in subclause (a) (i) and the predecessor of this Act and this Act applies to the security interest described in subclause (a) (ii). *New.*

R.S.O. 1980,  
c. 94

**80.**—(1) Upon the request of any person and upon payment of the prescribed fee, a document registered under a prior law shall be provided for inspection unless the document has been destroyed.

Inspection of  
prior law  
documents

(2) Upon the request of any person and upon payment of the prescribed fee, the registrar shall furnish the person with a certified copy of a document registered under a prior law unless the document has been destroyed. R.S.O. 1980, c. 375, s. 66 (2), *amended.*

Copies of  
documents

(3) A certified copy provided under subsection (2) is *prima facie* proof of the contents of the document so certified. *New.*

Idem

**81.** Except as provided in subsections 78 (7) and (12), the order of priorities between a security interest created under a prior law and any other security interest shall be determined without regard to the priority rules set out in this Act. *New.*

Priorities

**82.**—(1) A financing statement or financing change statement prepared in accordance with the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980 and the regulations thereunder, as they read immediately before the repeal of that Act, shall be accepted for registration if it is received by the registrar or a branch registrar within thirty days of the day this section comes into force.

Use of old  
forms

(2) Every financing statement or financing change statement received by the registrar or a branch registrar before the repeal of the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, or received under subsection (1) expires on the expiry of the third anniversary of its registration or, in the case of a financing change statement that does not extend a period of registration, with

Period of  
registration



the expiry of the financing statement to which it relates and may be renewed under this Act. *New.*

**83. Section 26 of the *Execution Act*, being chapter 146 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

Taking  
security  
interests in  
personal  
property in  
execution  
R.S.O. 1980,  
c. 375

**26.—(1)** Where an execution debtor is a secured party and the security interest is perfected by registration under the *Personal Property Security Act*, upon payment of the proper fees, a sheriff may seize the security interest by registering a financing change statement under that Act in the form prescribed thereunder recording the seizure of the security interest and the sheriff, after registering the financing change statement, may sell the execution debtor's security interest.

Effect of  
registration

(2) Upon the registration of the financing change statement referred to in subsection (1), the security interest of the execution debtor is bound by the execution, and the registration is notice of the execution and seizure to all persons who may thereafter acquire an interest in the security agreement or the property subject to the security interest and the rights of the sheriff and the execution creditor have priority over the rights of all persons who subsequently acquire an interest in the security agreement.

Service of  
notice on  
debtor

(3) The debtor under a security agreement is not affected by a seizure under this section unless a notice of the seizure has been served upon the debtor, and any payment made by the debtor under the security agreement to the secured party before such service shall be valid.

Payment to  
sheriff

(4) After the debtor has been served with a notice of seizure under subsection (3), the debtor shall pay to the sheriff all money then payable and, as it becomes due, all money that may become payable under the security agreement so far as may be necessary to satisfy the execution.

Payments  
made after  
notice

(5) Any payment made to the secured party after service of the notice of seizure under subsection (3) or after actual knowledge of the seizure is void as against the sheriff and the execution creditor.

When seizure  
no longer  
effective

R.S.O. 1980,  
c. 375

(6) Where a financing change statement has been registered under subsection (2) and the execution has expired or is satisfied, set aside or withdrawn, the sheriff shall register a financing change statement under the *Personal Property Security Act* in the form prescribed thereunder recording the fact that the seizure of the security interest is no longer effective.

(7) In addition to the remedies provided in this Act, upon seizure of the security interest, the sheriff has all the rights and remedies of the execution debtor under the security agreement and the *Personal Property Security Act*, and the sheriff is entitled to a bond of indemnity sufficient to indemnify against all costs and expenses to be incurred by the sheriff in the enforcement of the security agreement.

Rights and  
remedies of  
sheriff

R.S.O. 1980,  
c. 375

(8) On and after the day sections 68 and 69 of the *Personal Property Security Act*, 1989 come into force, the references to the *Personal Property Security Act* in subsections (1), (6) and (7) shall be deemed to be references to the *Personal Property Security Act*, 1989.

Transition  
1989, c. 16

**84.**—(1) The following Acts are repealed:

Repeals

1. The *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980.
2. The *Personal Property Security Amendment Act*, 1981, being chapter 2.
3. The *Personal Property Security Amendment Act*, 1981 (No. 2), being chapter 58.
4. The *Bills of Sale Act*, being chapter 43 of the Revised Statutes of Ontario, 1980.
5. The *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980.

(2) No sale of goods to which the *Bills of Sale Act* applied before its repeal shall be void for failure to comply with that Act.

Transition  
R.S.O. 1980,  
c. 43

(3) Subsection (2) does not affect the rights acquired by any person from a judgment or order of any court before the day this Act comes into force or affect the outcome of any litigation commenced on or before the 8th day of June, 1988.

Idem

**85.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**86.** The short title of this Act is the *Personal Property Security Act*, 1989.

Short title





## CHAPTER 17

### An Act to revise and consolidate the Law related to Repairers' and Storers' Liens

*Assented to March 2nd, 1989*

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## Definitions

**1.—(1)** In this Act,

“article” means an item of tangible personal property other than a fixture;

“lien claimant” means a person who is entitled to claim a lien for the repair, storage or storage and repair of an article;

1989, c. 16      “motor vehicle” means a motor vehicle as defined in the regulations made under the *Personal Property Security Act, 1989*;

“prescribed” means prescribed by a regulation made under this Act;

“registrar” and “branch registrar” mean, respectively, the registrar and a branch registrar under the *Personal Property Security Act, 1989*;

“repair” means an expenditure of money on, or the application of labour, skill or materials to, an article for the purpose of altering, improving or restoring its properties or maintaining its condition and includes,

- (a) the transportation of the article for purpose of making a repair,
- (b) the towing of an article,
- (c) the salvage of an article;

“repairer” means a person who makes a repair on the understanding that the person will be paid for the repair;

“storer” means a person who receives an article for storage or storage and repair on the understanding that the person will be paid for the storage or storage and repair, as the case may be.

Repair, etc.,  
by third  
party

(2) The following rules apply where an article is left for repair, storage or storage and repair and the article is forwarded by the person with whom the article is left to some other person for the repair, storage or storage and repair:

1. The person with whom the article was left shall be deemed to have performed the services and to be entitled to the rights of a repairer or storer against the person who left the article unless,

- i. there is a written agreement between the person who left the article and the person with whom it was left that there is no lien, or
  - ii. the person with whom the article was left has agreed to act as agent for the person who left the article in forwarding it to an identified repairer or storer for the repair, storage or storage and repair.
2. Unless subparagraph ii of paragraph 1 applies, the person to whom the article was forwarded does not have a lien under this Act.

**2. This Act binds the Crown.**

Act binds  
Crown

**PART I**

**POSSESSORY LIENS**

**3.—(1)** In the absence of a written agreement to the contrary, a repairer has a lien against an article that the repairer has repaired for an amount equal to,

Repairer's  
lien

- (a) the amount that the person who requested the repair agreed to pay;
- (b) where no such amount has been agreed upon, the fair value of the repair; or
- (c) where only part of a repair is completed, the fair value of the part completed,

and the repairer may retain possession of the article until the amount is paid.

**(2)** A repairer's lien arises and takes effect when the repair is commenced.

When lien  
arises

**(3)** A repairer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period following the day,

Disposition

- (a) on which the amount required to pay for the repair comes due; or
- (b) on which the repair is completed, if no date is stated for when the amount required to pay for the repair comes due.



Deemed  
possession

(4) For the purposes of this Act, a repairer who commences the repair of an article that is not in the repairer's actual possession shall be deemed to have gained possession of the article when the repair is commenced and shall be deemed to have given up possession when the repair is completed or abandoned.

Idem

(5) A repairer who, under subsection (4), is deemed to have possession of an article may remove the article from the premises on which the repair is made.

Storer's lien

**4.—**(1) Subject to subsection (2), a storer has a lien against an article that the storer has stored or stored and repaired for an amount equal to,

- (a) the amount agreed upon for the storage or storage and repair of the article;
- (b) where no such amount has been agreed upon, the fair value of the storage or storage and repair, including all lawful claims for money advanced, interest on money advanced, insurance, transportation, labour, weighing, packing and other expenses incurred in relation to the storage or storage and repair of the article,

and the storer may retain possession of the article until the amount is paid.

Limit on  
storer's lien

(2) A storer is not entitled to a lien for a repair made to an article unless the repair is made by the storer on the understanding that the storer would be paid for the repair or unless subsection 28 (2) applies.

When lien  
arises

(3) A storer's lien arises and takes effect when the storer receives possession of the article for storage or storage and repair.

Notice to  
owner, etc.,  
in certain  
cases

(4) Where the storer knows or has reason to believe that possession of an article subject to a lien was received from a person other than,

- (a) its owner; or
- (b) a person having its owner's authority,

the storer, within sixty days after the day of receiving the article, shall give written notice of the lien,

(c) to every person whom the storer knows or has reason to believe is the owner or has an interest in the article, including every person who has a security interest in the article that is perfected by registration under the *Personal Property Security Act, 1989* 1989, c. 16 against the name of the person whom the storer knows or has reason to believe is the owner; and

(d) in addition to the notices required by clause (c) where the article is a vehicle,

(i) to every person who has a registered claim for lien against the article under Part II of this Act,

(ii) to every person who has a security interest in the vehicle that is perfected by registration under the *Personal Property Security Act, 1989* against the vehicle identification number of the vehicle, and

(iii) if the vehicle is registered under the *Highway Traffic Act*, to the registered owner. R.S.O. 1980, c. 198

(5) A notice under subsection (4) shall contain,

Contents of notice

(a) a description of the article sufficient to enable it to be identified;

(b) the address of the place of storage, the date that it was received and the name of the person from whom it was received;

(c) a statement that a lien is claimed under this Act by the storer in respect of the article; and

(d) a statement advising how the article may be redeemed.

(6) Where a storer fails to give the notice required by subsection (4), the storer's lien as against the person who should have been given the notice is limited to the unpaid amount owing in respect of the period of sixty days from the date when the article was received, and the storer shall surrender possession of the article to that person where the person proves a right to possession and pays that amount.

Effect of failure to give notice

(7) The storer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period

Disposition

following the day on which the amount required to pay for the storage or storage and repair becomes due.

Loss of lien

**5.** A lien under this Part is discharged and cannot be revived as an interest in the article if possession of the article that is subject to the lien is surrendered to, or lawfully comes into the possession of, the owner or any other person who is entitled to receive a notice under subsection 15 (2).

Priority of lien

**6.** A lien under this Part has priority over the interests of all other persons in the article.

## PART II

### NON-POSSESSORY LIENS

Non-possessory lien

**7.—(1)** A lien claimant who is entitled to a lien under Part I (Possessory Liens) against an article, and who gives up possession of the article without having been paid the full amount of the lien to which the lien claimant is entitled under Part I, has, in place of the possessory lien, a non-possessory lien against the article for the amount of the lien claimed under Part I that remains unpaid.

When lien arises

**(2)** A non-possessory lien arises and takes effect when the lien claimant gives up possession of the article.

Priority

**(3)** A non-possessory lien has priority over the interest in the article of any other person other than a lien claimant who is claiming a lien under Part I, and, where more than one non-possessory lien is claimed in the same article, priority shall be determined according to the same rules of priority as govern the distribution of proceeds under section 16.

Period of credit not to affect lien

**(4)** A non-possessory lien is not extinguished by reason only that the lien claimant has allowed a period of credit for the payment of the debt to which the lien relates.

Acknowledgment of indebtedness required

**(5)** A non-possessory lien is enforceable only if the lien claimant obtains a signed acknowledgment of the indebtedness which acknowledgment may be on an invoice or other statement of account.

Idem

**(6)** An acknowledgment of indebtedness under subsection (5) is without prejudice to the right of the owner or any other person to dispute in a proceeding the amount that the lien claimant is owed.

Transactions in ordinary course of business

**8.—(1)** A buyer of an article from a seller who sells it in the ordinary course of business takes it free of any non-



possessory lien of a lien claimant whose lien arose from its repair or storage at the request of the seller or the seller's agent, unless the buyer signs an acknowledgment referred to in subsection 7 (5).

(2) Notwithstanding that a buyer has signed an acknowledgment as provided in subsection (1), a purchaser purchasing the article in the ordinary course of the buyer's business takes it free of the lien claimant's lien. Idem

**9.**—(1) A claim for lien or change statement to be registered under this Part shall be in the prescribed form and may be tendered for registration at a branch office established under Part IV of the *Personal Property Security Act, 1989*, or by mail addressed to an address prescribed under that Act. Registration of documents  
1989, c. 16

(2) A claim for lien or change statement is not invalidated nor is its effect impaired by reason only of error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by the error or omission. Errors in documents

**10.**—(1) A non-possessory lien is enforceable against third parties only if a claim for lien has been registered, and, where a person acquires a right against an article after a non-possessory lien arises, the right of the person has priority over the non-possessory lien of the lien claimant if a claim for lien was not registered before the person acquired the right. Claim for lien

(2) A claim for lien may relate to more than one article and may be registered at any time after an acknowledgment of indebtedness has been signed. Idem

(3) A claim for lien is effective from the time assigned to its registration by the registrar or branch registrar and expires at, and cannot be renewed after, the end of the earlier of, Idem

(a) the end of the registration period as set out in the claim for lien or as extended by the most recent change statement registered under subsection (4) or reduced by a change statement registered under subsection (7); and

(b) the third anniversary of the registration of the claim for lien.

(4) The registration period set out in a claim for lien or change statement may be extended by filing a change statement before the end of the registration period. Idem

## Assignment

(5) A change statement may be registered to record an assignment of a non-possessory lien where a claim for lien has been registered.

## Idem

(6) Where a claim for lien has not been registered and the lien claimant has assigned the non-possessory lien before the registration of the claim for lien, a claim for lien may be registered,

- (a) naming the assignor as the lien claimant and subsection (5) applies; or
- (b) naming the assignee as the lien claimant and subsection (5) does not apply.

## Changes in information

(7) Unless the information related to a claim for lien has been removed from the central file of the registration system, a change statement may be registered at any time during the registration period,

- (a) to correct an error or omission in a claim for lien or any change statement related thereto; or
- (b) to amend a claim for lien or any change statement related thereto where the amendment is not otherwise provided for in this Part.

## Change statements

**11.** The registration of a change statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective so long as the registration of the claim for lien to which it relates is effective.

## Discharge

**12.—(1)** A non-possessory lien is discharged and cannot be revived as an interest in the article,

- (a) upon payment to the lien claimant of the amount of the lien claimed;
- (b) upon payment into court under Part IV (Dispute Resolution) of the amount set out in the claim for lien;
- (c) upon the order of a court;
- (d) upon the registration of a change statement recording the discharge;
- (e) upon the expiry of the registration period of the claim for lien; and

- (f) if the article is a motor vehicle, upon a change of ownership of the vehicle if a claim for lien was not registered before the change of ownership occurred.

(2) Where a claim for lien relates to more than one article and it is agreed to release one or more, but not all, of the articles from the lien, a change statement recording the release may be registered. Partial discharge

(3) Where a release described in subsection (2) is given, any person may, by written request, require the lien claimant to deliver to the person making the request a change statement recording the release. Idem

(4) Within thirty days after a registered claim for lien is discharged under clause (1) (a), (b), (c) or (f) or within thirty days of a request being made under subsection (3), the lien claimant shall register a change statement recording the discharge or partial discharge. Time limit

(5) Where a lien claimant fails to comply with subsection (4), the claimant, on written notice from the owner or other person with an interest in the article, shall pay the owner or other person \$100 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction. Penalty

**13.** Upon application to the District Court, the court may order the registrar to amend the information recorded in the central file of the registration system to indicate that the registration of a claim for lien has been discharged or has been partially discharged, upon any grounds and subject to any conditions that the court considers appropriate in the circumstances. Correction of registrar's records

**14.—(1)** A lien claimant who has a non-possessory lien and who has registered a claim for lien may deliver at any time to the sheriff of the county or district in which the article is located a copy of the registered claim for lien and a direction to seize the article. Seizure of article

(2) Upon receipt of a copy of a registered claim for lien and a direction to seize an article under subsection (1), the sheriff shall seize the article described in the direction wherever it may be found and shall deliver it to the lien claimant who issued the direction. Idem

(3) Nothing in subsection (1) or (2) prevents a lien claimant from exercising any lawful power of seizure with respect to Other powers of seizure not affected



the article whether provided for by contract or otherwise available to the lien claimant by law.

- Limitation (4) An article shall not be seized if it is in the possession of a lien claimant who claims to be entitled to a lien against it under Part I (Possessory Liens).
- Disposition (5) A lien claimant who has a non-possessory lien against an article has a right to sell the article in accordance with Part III (Redemption, Sale or Other Disposition) if,
- (a) the article has been seized and is in the possession of the lien claimant;
  - (b) at least sixty days have expired since the day when the non-possessory lien arose; and
  - (c) any part of the amount to which the lien relates is due but unpaid.
- Liability for damages (6) The lien claimant is liable to any person who suffers damages as a result of a seizure under subsection (1) if the lien claimant has entered into an agreement for payment of the debt to which the claim for lien relates and there has been no default under the agreement.

### PART III

#### REDEMPTION, SALE OR OTHER DISPOSITION

- Sale of article **15.—**(1) A lien claimant who has a right, under this Act, to sell an article shall not exercise that right unless the lien claimant has given notice of intention to sell the article.
- Idem (2) A notice of intention to sell an article shall be in writing and shall be given at least fifteen days before the sale to,
- (a) the person from whom the article was received for repair, storage or storage and repair;
  - (b) where the article was received for repair, storage or storage and repair from a person other than the owner,
    - (i) the person who is the registered owner of the article, if the article is a motor vehicle, or
    - (ii) the person the lien claimant knows or has reason to believe is the owner, if the article is not a motor vehicle;

- (c) every person who has a security interest in the article under the *Personal Property Security Act, 1989* 1989, c. 16 that is perfected by registration against,

(i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

(ii) the vehicle identification number, if the article is a motor vehicle; and

- (d) every person who has registered a claim for lien under Part II (Non-possessory Liens) against,

(i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

(ii) the vehicle identification number, if the article is a motor vehicle.

- (3) The notice required by subsection (2) shall contain,

Contents of  
notice

- (a) a description of the article sufficient to enable it to be identified;

- (b) a statement of the amount required to satisfy the lien, as of the time when the notice is given, and any costs of seizure;

- (c) a statement of the method of calculating, on a daily basis, any further costs for storage or preservation of the article that may be incurred between the time when the notice is given and the time when the sale is to take place;

- (d) a statement that the article may be redeemed by any person entitled to receive notice by payment of the amount determined under clauses (b) and (c) plus any other reasonable costs incurred in preparing the article for sale;

- (e) a statement of,

(i) the name of the person to whom payment may be made,

(ii) the address where the article may be redeemed,

(iii) the times during which redemption may be made,

- (iv) the telephone number, if any, of the person giving notice;
- (f) a statement of the date, time and place of any public sale at which the article is to be sold, or the date after which any private sale of the article is to be made; and
- (g) a statement that the article may be sold unless it is redeemed on or before the day required to be specified in the notice by clause (f).

Method of  
sale

(4) The article may be sold in whole or in part, by public or private sale, at any time and place, on any terms, so long as every aspect of the sale is commercially reasonable.

Purchase by  
lien claimant

(5) The lien claimant may purchase the article only at a public sale.

Proceeds of  
sale

**16.—**(1) Where a lien claimant has sold an article under this Part, the proceeds of sale shall be applied consecutively,

- (a) to the reasonable expenses of selling the article;
- (b) to the costs of seizure;
- (c) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of the lien claimant making the sale;
- (d) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of every lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;
- (e) where the lien claimant making the sale has a non-possessory lien under Part II, to the satisfaction of the lien of the lien claimant making the sale and to the satisfaction of the lien of every other lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before



or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;

- (f) to the payment of every person who has a perfected security interest in the article under the *Personal Property Security Act, 1989* who was entitled to notice under subsection 15 (2), who gives the lien claimant written notice of the amount owing in respect of the perfected security interest claimed by the person giving the notice before or within ten days after the sale, in accordance with the priority rules under that Act; and 1989, c. 16
- (g) to the payment of the owner or other person entitled thereto, if the lien claimant has actual knowledge of the claim of that person.

(2) Where there is a question concerning the right of any person to share in the proceeds of a sale, the lien claimant may pay the proceeds or any part thereof into court and the proceeds shall not be paid out of court except in accordance with an order made under section 23. Payment into court

**17.—**(1) A lien claimant who has a right to sell an article may propose, in lieu of selling it, to retain the article in satisfaction of the amount of the lien claimed by giving written notice of the proposal to the persons entitled to notice under subsection 15 (2). Retention of article

(2) Where a person entitled to notice under subsection (1) gives the lien claimant a written objection to the proposal within thirty days of the receipt of the proposal, the lien claimant, subject to subsections (3) and (4), shall sell the article in accordance with section 15. Objection

(3) Upon application to the District Court and upon notice to every person who has given a written objection to the proposal, the court may order that the objection is ineffective because, Application to District Court

- (a) the objection was made for a purpose other than the protection of the interest in the article of the person who made the objection; or
- (b) the fair market value of the article is less than the amount of the lien of the lien claimant and the estimated expenses to which the lien claimant is entitled under this Act.

## Foreclosure

(4) If no effective objection is made, the lien claimant, at the expiration of the thirty-day period mentioned in subsection (2), shall be deemed to have irrevocably elected to retain the article and thereafter is entitled to hold or dispose of the article free from the rights and interests of every person to whom the written notice of the proposal was given.

## Effect of sale or foreclosure; amount of lien deemed satisfied

**18.** Where a lien claimant,

- (a) sells an article under section 15; or
- (b) is deemed to have elected irrevocably to retain the article under subsection 17 (4),

the lien claimant shall be deemed to have sold the article or retained the article in full satisfaction of the amount owing in respect of the lien.

## Gift to charity

**19.—**(1) A lien claimant who has retained possession of an article for twelve months after the right to sell the article arose may give the article to a charity registered under the *Income Tax Act* (Canada) if,

R.S.C. 1952,  
c. 148

- (a) the article has a fair market value of less than the total of the amount of the lien claimed by the lien claimant and the amount of the estimated expenses to which the lien claimant is entitled under this Act; and
- (b) the lien claimant has not given a notice of intention to sell under section 15 or a notice of a proposal to retain the article under section 17.

## Records to be maintained

(2) A lien claimant who disposes of an article under this section shall maintain for six years a record of the article disposed of and the charity to which it was given.

## Effect of disposition on title of article

**20.—**(1) Although a lien claimant has failed to comply with this Part, a purchaser who buys an article in good faith,

- (a) in a sale under section 15; or
- (b) from a lien claimant who has retained an article under section 17,

acquires the article free of the interest of the owner and any person entitled to notice under this Part.

(2) A charity that is given an article by a lien claimant under section 19, acquires the article free of the interest of the owner and all other persons. Idem

**21.** A lien claimant who fails to comply with the requirements of this Part is liable to any person who suffers damages as a result and shall pay the person an amount equal to the greater of \$200 or the actual damages. Liability of lien claimant for non-compliance

**22.** At any time before the lien claimant, Redemption of article

- (a) has sold the article under section 15 or contracted for such sale;
- (b) is deemed to have irrevocably elected to retain the article under section 17; or
- (c) has given the article to a charity under section 19,

the owner and any person referred to in subsection 15 (2) may redeem the article by paying the amount required to satisfy the lien.

## PART IV

### DISPUTE RESOLUTION

**23.—(1)** Any person may apply to a court for a determination of the rights of the parties where a question arises with respect to, Determination of rights by court

- (a) the seizure of an article under Part II (Non-possessory Liens) or any right of seizure in respect of an article;
- (b) the sale of an article under Part III (Redemption, Sale or Other Disposition);
- (c) the distribution of the proceeds of the sale of an article under Part III, including the right of any person to share in those proceeds, and the obligation of any lien claimant to account for those proceeds;
- (d) the amount of a lien or the right of any person to a lien; and
- (e) any other matter arising out of the application of this Act,



and the court may make such order as it considers necessary to give effect to those rights.

Limitation

(2) An application shall not be made under clause (1) (d) where an application has been made under section 24.

Possessory  
liens; return  
of article

**24.—**(1) Where a lien is claimed under Part I (Possessory Liens) and the lien claimant refuses to surrender possession of the article to its owner or any other person entitled to it, and there is,

- (a) a dispute concerning the amount of the lien of the lien claimant including any question relating to the quality of the repair, storage or storage and repair;
- (b) in the case of a repair, a dispute concerning the amount of work that was authorized to be made to the article; or
- (c) a dispute concerning the right of the lien claimant to retain possession of the article,

the owner or other person lawfully entitled to the article may apply to the court in accordance with the procedure set out in this section to have the dispute resolved and the article returned.

Respondent

(2) The lien claimant shall be named as the respondent in the application.

Form

(3) The application shall be in the prescribed form and may include an offer of settlement.

Payment into  
court

(4) The applicant shall pay into court, or deposit security with the court in the amount of, the full amount claimed by the respondent but where the applicant includes an offer of settlement in the application, the applicant shall pay into court the amount offered in settlement and shall pay into court, or deposit security with the court for, the balance of the full amount claimed by the respondent and payments and deposits under this subsection shall be made to the credit of the application.

Initial  
certificate

(5) Where money is paid into court or a deposit is made with the court under subsection (4), the clerk or registrar of the court shall issue an initial certificate in the prescribed form and under the seal of the court stating that the amount indicated therein, or security therefor, has been paid into or posted with the court to the credit of the application, and

where applicable, indicating the portion of that amount that is offered in settlement of the dispute.

(6) The applicant shall give the initial certificate to the respondent who, within three days of receiving the initial certificate, shall release the article described therein to the applicant unless, within the three day period, the respondent files with the court a notice of objection in the prescribed form.

Release on  
interim  
certificate

(7) Where an objection has been filed with the court, the applicant may pay into court or post security with the court, to the credit of the application, the additional amount claimed as owing in the objection, and where the additional amount has been paid into court or the additional security has been posted, the clerk or registrar shall issue a final certificate in the prescribed form and under the seal of the court.

Final  
certificate

(8) The applicant shall give the final certificate to the respondent who, upon receiving the final certificate, shall release immediately the article described therein.

Release on  
final  
certificate

(9) Where the respondent does not release the article as required, the applicant may obtain from the clerk or registrar of the court, without notice to the respondent, a writ of seizure directing the sheriff or bailiff to seize the article and, upon receipt of the writ, the sheriff or bailiff shall seize the article and return it to the applicant.

Writ of  
seizure

(10) Before obtaining a writ of seizure, the applicant shall file an affidavit with the clerk or registrar of the court confirming that the respondent has not released the article as required.

Idem

(11) Where the respondent releases the article to the applicant in compliance with an initial or final certificate, or where the article is seized by a sheriff or bailiff under a writ of seizure, the respondent may demand a receipt in the prescribed form to this effect, and upon presentation of the receipt to the clerk or registrar of the court and signing a waiver of further claim in the prescribed form, the respondent shall be paid the portion of the amount paid into court that was offered in settlement of the dispute.

Payment out  
of court of  
settlement

(12) Where the respondent accepts the amount offered in settlement of the dispute, the clerk or registrar of the court shall notify the applicant and upon request shall return to the applicant the balance of the amount deposited into court and deliver up any security deposited by the applicant for cancellation.

Notice to  
applicant

Substitution  
of security

(13) Where the article is released to the applicant by the respondent or is seized by the sheriff or bailiff under subsection (9), the lien is discharged as a right against the article and becomes instead a charge upon the amount paid into court or the security posted with the court, and where the respondent seeks to recover the full amount claimed by the respondent to be owing, the respondent may commence an action to recover that amount.

## Discharge

(14) The charge upon the money paid into court or the security posted with the court is discharged ninety days after the article was returned to the applicant or seized unless, before the end of the ninety days, the respondent has accepted the applicant's offer of settlement or has commenced an action to recover the amount claimed.

Return of  
money or  
security

(15) Upon the expiry of the ninety days referred to in subsection (14), the clerk or registrar of the court may return to the applicant the money paid into court and deliver up for cancellation any security posted with the court if the applicant files with the clerk or registrar an affidavit confirming that the respondent has neither accepted an offer of settlement nor commenced an action to recover the money claimed.

Costs of  
enforcing  
writ seizure

(16) The respondent is liable for the costs of enforcing a writ of seizure and these costs shall be set off against the amount paid into court under this section.

## Proper court

**25.** An application under this Part may be brought in any court of appropriate monetary and territorial jurisdiction.

## PART V

## GENERAL

Separate  
liens

**26.—(1)** A separate lien arises under this Act each time an article is repaired, stored or stored and repaired.

## No tacking

(2) A lien under this Act cannot be tacked onto another lien under this Act.

Service of  
documents

**27.—(1)** A document required to be given or that may be given under this Act is sufficiently given if it is given personally to the intended recipient or if it is sent by certified or registered mail or prepaid courier to the intended recipient at,

- (a) the intended recipient's address for service if there is one;



- (b) the last known mailing address of the intended recipient according to the records of the person sending the document, where there is no address for service; or
- (c) the most recent address of the intended recipient as shown on a claim for lien or change statement registered under this Act or as shown on financing statement or financing change statement registered under the *Personal Property Security Act, 1989*.

1989, c. 16

(2) A document sent to the intended recipient by certified or registered mail shall be deemed to have been given on the earlier of,

Service by mail

- (a) the day the intended recipient actually receives it; or
- (b) the tenth day after the day of mailing.

**28.—(1)** Where an article that is subject to a lien is in the lien claimant's possession, the lien claimant,

Lien claimant's rights and obligations

- (a) shall use reasonable care in the custody and preservation of the article, unless a higher standard of care is imposed by law; and
- (b) unless otherwise agreed,
  - (i) shall keep the article identifiable, and
  - (ii) may create a security interest under the *Personal Property Security Act, 1989* in the article, but only upon terms that do not impair a right of redemption under that Act or this Act.

(2) Unless otherwise agreed, a lien claimant is entitled to recover the commercially reasonable expenses incurred in the custody, preservation and preparation for sale of an article that is subject to a lien, including the cost of insurance and the payment of taxes or other charges incurred therefor, and the expenses are chargeable to and secured by the article and may be included by the lien claimant in determining the amount required to satisfy the lien.

Reasonable expenses

(3) Except as provided in clause 4 (1) (b), a lien claimant is not entitled to a lien for interest on the amount owing with respect to an article but this subsection does not affect any

Interest

right that the lien claimant may otherwise have to recover such interest.

Effect of  
failure to  
meet  
obligation

(4) A lien claimant is liable for any loss or damage caused by a failure to meet any obligation imposed by this section but does not lose the lien against the article by reason only of that failure.

Use of article

(5) A lien claimant may use an article,

- (a) for the purpose of preserving the article or its value;
- (b) for the purpose of making a reasonable demonstration of the quality or properties of the article in order to facilitate the making of a sale under this Act;
- (c) in accordance with an order of any court before which an application is being heard or an action is being tried in respect of that article; or
- (d) in accordance with any agreement with the owner.

Effect of  
unauthorized  
use or  
dealing

(6) Where the lien claimant uses or deals with an article in a manner not authorized by this Act, the lien claimant is liable for any loss or damage caused by that use or dealing and may be restrained by an injunction.

Assignment  
of lien

**29.—**(1) A lien claimant may assign the lien claimant's right to a lien by an instrument in writing.

Idem

(2) An assignment of a possessory lien under Part I becomes effective when the lien claimant delivers possession of the article to the assignee.

Idem

(3) An assignment of a non-possessory lien under Part II is enforceable against third parties only if a change statement recording the assignment has been registered under subsection 10 (5) or a claim for lien has been registered under clause 10 (6) (b).

Destruction  
of books,  
records, etc.

**30.—**(1) The registrar may authorize the destruction of books, documents, records or paper that have been micro-filmed or that in the registrar's opinion need not be preserved any longer.

Removal of  
information  
from  
registration  
system

(2) The registrar may remove from the central file of the registration system information related to a claim for lien or a change statement,

- (a) if the claim for lien is no longer effective;
- (b) upon the receipt of a change statement discharging the registration of a claim for lien;
- (c) upon receipt of a court order requiring the registrar to amend the information recorded in the central file to indicate the discharge of a claim for lien or a change statement.

(3) The registrar, upon notice to the lien claimant, may remove from the central file of the registration system information related to a change statement if, Idem

- (a) it does not set out the correct file number of the claim for lien or change statement to which it relates; or
- (b) it does not set out the name of the person against whom the lien is claimed as that name is set out in the claim for lien or change statement to which it relates.

**31.—**(1) A sheriff acting under a direction to seize an article or a writ of seizure, or a bailiff acting under a writ of seizure, may use reasonable force to enter land and premises if the sheriff or bailiff believes, on reasonable and probable grounds, that the article to be seized is there and reasonable force may be used to execute the direction or writ. Power of sheriffs and bailiffs

(2) A sheriff acting under a direction to seize an article or a writ of seizure, or a bailiff acting under a writ of seizure, in respect of an article in a dwelling shall not use force to enter the dwelling or to execute the direction or writ except under the authority of, Restriction

- (a) the order of a court of competent jurisdiction, in the case of a direction to seize an article;
- (b) the order of the court that issued the writ, in the case of a writ of seizure.

(3) A court may make an order for the purposes of subsection (2) if, in the opinion of the court, there is reasonable and probable grounds to believe that the article to be seized is in the dwelling. Court orders

**32.** The Lieutenant Governor in Council may make regulations, Regulations



- (a) requiring the payment of fees and prescribing the amounts thereof;
- (b) prescribing forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;
- (c) requiring that claim for lien forms and change statements forms to be registered under Part II shall be those provided or approved by the registrar;
- (d) governing the time assigned to the registration of claims for lien and change statements;
- (e) prescribing abbreviations, expansions or symbols that may be used in a claim for lien or change statement or in the recording or production of information by the registrar;
- (f) prescribing the types of security that may be deposited with a court under section 24.

## PART VI

### MISCELLANEOUS

#### Transition

**33.—**(1) Where under any Act, a person has or is entitled to a lien that may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or in the manner provided by the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, the person shall be deemed to be a lien claimant having a possessory lien under Part I (Possessory Liens) of this Act and the lien may be enforced under Part III (Redemption, Sale or Other Disposition) of this Act.

#### Idem

(2) A lien that arose before the coming into force of this section and that could have been enforced under section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or under the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, or under the *Unclaimed Articles Act*, being chapter 513 of the said Revised Statutes, may continue to be enforced as if those Acts had not been repealed or the person claiming the lien may enforce the lien under Part III of this Act as if the lien were a possessory lien under Part I.

**34.** Subsection 2 (8) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the third line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

**35.—**(1) Subsection 147 (13) of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 63, section 33, is further amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth and ninth lines and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

(2) Subsection 190 (5) of the said Act is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the fourth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

**36.** Subsection 23 (3) of the *Niagara Parks Act*, being chapter 317 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 38, section 3, is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

**37.** The following are repealed:

Repeals

1. The *Mechanics’ Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980.
2. The *Unclaimed Articles Act*, being chapter 513 of the Revised Statutes of Ontario, 1980.
3. The *Warehousemen’s Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980.

**38.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**39.** The short title of this Act is the *Repair and Storage Liens Act, 1989*.

Short title





## CHAPTER 18

### An Act respecting transfers of Water

*Assented to March 2nd, 1989*

Whereas water is a precious and limited resource that is vital to the long-term social, environmental and economic well-being of Ontario; and whereas the Province has a responsibility to ensure a secure supply of water for Ontario;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** In this Act,

Definitions

“approval” means the approval of the Minister under subsection 4 (1);

“inspector” means a person who is appointed by the Minister as an inspector under section 9;

“Minister” means the Minister of Natural Resources;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act;

“water” means natural surface and ground water in liquid, gaseous or solid state, but does not include spring or mineral water bottled as a beverage for human consumption.

(2) For the purposes of this Act, Ontario is divided into four provincial drainage basins as follows:

Interpretation

1. Lake Ontario, Lake Erie, Lake Huron, Lake Superior and the St. Lawrence River and the part of Ontario the water of which drains into any of them.
2. The Ottawa River and the part of Ontario the water of which drains into it.
3. The part of Ontario the water of which drains into the Nelson River.

4. The part of Ontario the water of which drains into Hudson Bay or James Bay.

Prohibition

**2.** No person shall transfer water out of a provincial drainage basin by any means without the written approval of the Minister.

Information required

**3.** A person who requests approval to transfer water out of a provincial drainage basin shall submit to the Minister plans, reports, studies and other information as are prescribed or as may be requested by the Minister.

Approval subject to conditions and payment

**4.—(1)** The Minister may approve a transfer of water out of a provincial drainage basin subject to such conditions and subject to the payment to the Crown of such amount as the Minister considers appropriate.

Manner and terms of payment

**(2)** The amount to be paid to the Crown for a transfer of water under subsection (1) may be a lump sum, a fixed periodic payment, an amount calculated according to the quantity of water transferred, or any combination thereof, and may be made payable on such terms as are prescribed or as the Minister determines.

Approval not transferable

**5.** An approval is not transferable.

Refusal

**6.—(1)** The Minister shall refuse to give approval to a transfer of water out of a provincial drainage basin if, in the Minister's opinion, the transfer may be detrimental to ensuring a secure water supply for Ontario or any part thereof.

Refusal to transfer outside Canada

**(2)** Despite the trade agreement signed on the 2nd day of January, 1988 by the Government of Canada and the Government of the United States of America or any law of Canada implementing the agreement, the Minister shall refuse to give approval to a transfer of water out of a provincial drainage basin to a place outside Canada.

Conditions and payments changed, etc.

**7.** The Minister may at any time,

- (a) waive or revoke a condition attached to an approval;
- (b) change a condition attached to an approval;
- (c) attach a new condition to an approval; or
- (d) change the amount or terms of the payment required to be paid to the Crown for the transfer of water.

**8.** If at any time after the Minister has given an approval the Minister is of the opinion that the transfer is or may be detrimental to ensuring a secure water supply for Ontario or any part thereof, the Minister shall revoke the approval. Revocation

**9.—(1)** The Minister may appoint in writing one or more employees of the Ministry or other persons as inspectors. Inspectors

**(2)** In an appointment under subsection (1), the Minister may limit the duties or the authority, or both, of an inspector in such manner as the Minister considers appropriate. Limitation

**10.—(1)** An inspector shall determine, Inspectors,  
duties

- (a) if section 2 is being or has been contravened;
- (b) if the conditions attached to a consent are being complied with;
- (c) if the amount of money owed to the Crown is or has been paid to the Crown; or
- (d) if an order issued under subsection 14 (5) or 15 (1) is being complied with.

**(2)** An inspector, for the purpose of carrying out his or her duties, Powers

- (a) may enter any place at any reasonable time;
- (b) may stop any vehicle or vessel at any reasonable time;
- (c) may inspect any place or thing;
- (d) may require that any machine or thing be operated or used;
- (e) may request the production for inspection of any documents or things;
- (f) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (e) for the purpose of making copies or extracts and shall promptly return them to the person who produced them; and
- (g) may record or copy any information by any method.



Entry to  
dwellings

**11.—(1)** A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant under this section.

Warrant for  
search

(2) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an inspector's duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the inspector named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for  
entry

(3) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an inspector may carry out his or her duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry.

Authority  
given by  
warrant

(4) A warrant issued under subsection (3) authorizes the inspector to whom it is issued, by force if necessary, and together with such police officers as the inspector calls upon for assistance, to do anything set out in section 10 and specified in the warrant.

Execution of  
warrant

(5) A warrant issued under this section shall specify the hours and days during which it may be executed.

Expiry of  
warrant

(6) A warrant issued under this section shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application  
without  
notice

(7) A justice of the peace may receive and consider an application for a warrant under this section without notice to and in the absence of the owner or occupier of the place named in the warrant.

Admissibility  
of copies

**12.** Copies of, or extracts from, documents and things removed from a place under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Obstruction  
of inspector

**13.—(1)** No person shall hinder, obstruct or interfere with an inspector in the execution of a warrant or otherwise

impede an inspector in carrying out his or her duties under this Act.

(2) Subsection (1) is not contravened where a person refuses to produce documents or things, or to operate or use machines or things, unless a warrant has been issued under section 11. Idem

(3) No person shall furnish an inspector with false information or neglect or refuse to furnish information required by an inspector for the purpose of carrying out his or her duties under this Act. False information

**14.—**(1) Every person who contravenes section 2 or 13 is guilty of an offence. Offences

(2) Every person who breaches a condition attached to an approval is guilty of an offence. Breach of condition

(3) Every individual who is convicted of an offence under this section is liable, Penalty for individuals

(a) on a first conviction, to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues; and

(b) on each subsequent conviction, to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues.

(4) Every corporation that is convicted of an offence under this section is liable, Penalty for corporations

(a) on a first conviction, to a fine of not more than \$250,000 for each day or part of a day on which the offence occurs or continues; and

(b) on each subsequent conviction, to a fine of not more than \$500,000 for each day or part of a day on which the offence occurs or continues.

(5) In addition to any penalty imposed under subsection (3) or (4), the court that convicts a person of an offence under this Act, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted. Restraining order upon conviction

**15.—**(1) Upon the application of counsel for the Attorney General to the Supreme Court or District Court, the court Restraining order

may make an order restraining a person from transferring water out of a provincial drainage basin without an approval.

Idem

(2) An order under subsection (1) is in addition to any penalty that may be imposed and may be made whether or not proceedings have been commenced for a contravention of section 2.

Regulations

**16.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and providing for their use;
- (b) governing applications for an approval;
- (c) prescribing plans, reports, studies and information to be submitted by applicants;
- (d) prescribing and governing the books, records and accounts that shall be kept by persons transferring water out of a provincial drainage basin;
- (e) prescribing and governing the reports and returns to be made to the Minister;
- (f) prescribing methods of calculating the amount of the payment required to be paid to the Crown for a transfer of water under this Act;
- (g) prescribing the terms of the payment required to be paid to the Crown for a transfer of water under this Act;
- (h) requiring that security be deposited by a person who has obtained an approval and prescribing the form, terms, conditions and amount of such security;
- (i) prescribing, by content, size or type of container, or any other characteristic, what is or is not considered to be spring or mineral water bottled as a beverage for human consumption for the purpose of the definition of water.

Commence-  
ment

**17.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**18.** The short title of this Act is the *Water Transfer Control Act, 1989*.



## CHAPTER 19

### An Act to amend the Legislative Assembly Act

*Assented to March 2nd, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsections 60 (1) and (2) of the *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1988, chapter 14, section 1, are repealed and the following substituted therefor:

(1) An indemnity at the rate of \$41,113 per annum shall be paid to every member of the Assembly. Members' indemnities

(2) An allowance for expenses at the rate of \$13,790 shall be paid to every member of the Assembly. Members' allowances

**2.** Section 61 of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 14, section 2, is repealed and the following substituted therefor:

**61.** In addition to the indemnity and allowance for expenses as a member, there shall be paid a Leader's allowance for expenses, Leaders' allowances

- (a) to the Premier, at the rate of \$7,758 per annum;
- (b) to the Leader of the Opposition, at the rate of \$5,173 per annum; and
- (c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly, at the rate of \$2,586 per annum.

**3.** Subsection 62 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 14, section 3, is repealed and the following substituted therefor:

Indemnity of  
Speaker,  
Leader of  
Opposition  
and leader of  
a minority  
party

(1) In addition to the indemnity as a member, there shall be paid,

- (a) to the Speaker an indemnity at the rate of \$22,214 per annum;
- (b) to the Leader of the Opposition an indemnity at the rate of \$30,094 per annum; and
- (c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly, an indemnity at the rate of \$15,110.

**4. Subsection 64 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 14, section 4, is repealed and the following substituted therefor:**

Chairman  
and Deputy  
Chairman of  
Whole House  
and chairmen  
of standing  
committees,  
indemnity

(1) In addition to the indemnity as a member, an indemnity shall be paid,

- (a) to the Deputy Speaker and Chairman of the Committees of the Whole House at the rate of \$9,297 per annum;
- (b) to the Deputy Chairman of the Committees of the Whole House at the rate of \$6,458 per annum; and
- (c) to the chairman of each standing committee at the rate of \$5,036 per annum.

**5. Subsection 65 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 14, section 5, is repealed and the following substituted therefor:**

Whips,  
indemnities

(1) In addition to the indemnity as a member, an indemnity shall be paid,

- (a) to the Chief Government Whip, at the rate of \$11,495 per annum;
- (b) to the Deputy Government Whip, at the rate of \$7,878 per annum;
- (c) to each of not more than three Government Whips, at the rate of \$5,682 per annum;
- (d) to the Chief Opposition Whip, at the rate of \$7,878 per annum;

- (e) to each of not more than two Opposition Whips, at the rate of \$5,682 per annum; and
- (f) in the case of each party that has a recognized membership of twelve or more persons in the Assembly, other than the party from which the Government is chosen and the party recognized as the Official Opposition,
  - (i) to the Chief Party Whip of the party, at the rate of \$6,458 per annum, and
  - (ii) to the Party Whip of the party, at the rate of \$5,166 per annum.

**6.** Subsection 67 (1) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 72, section 6 and 1988, chapter 14, section 6, is further amended by striking out “\$71” as set out in the amendment of 1988 and inserting in lieu thereof “\$74” and by striking out “\$82” as set out in that amendment and inserting in lieu thereof “\$86”.

**7.** Section 69 of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 14, section 7, is repealed and the following substituted therefor:

**69.** In addition to the indemnity as a member, an indemnity shall be paid,

House  
Leaders’  
indemnities

- (a) to the Opposition House Leader, at the rate of \$11,495 per annum;
- (b) to the House Leader of a party, other than the party from which the Government is chosen and the party recognized as the Official Opposition, that has a recognized membership of twelve or more persons in the Assembly, at the rate of \$8,652 per annum.

**8.** This Act shall be deemed to have come into force on the 1st day of April, 1988.

Commence-  
ment

**9.** The short title of this Act is the *Legislative Assembly Amendment Act, 1989*.

Short title





## CHAPTER 20

### An Act to amend the Executive Council Act

*Assented to March 2nd, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsections 3 (1), (2), (3) and (4) of the *Executive Council Act*, being chapter 147 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1988, chapter 15, section 1, are repealed and the following substituted therefor:

(1) The annual salary of every minister with portfolio is \$30,094. Salaries

(2) The Premier and President of the Council shall receive, in addition, \$12,788 per annum. Additional salary for Premier

(3) The annual salary of every minister without portfolio is \$15,111. Salary of minister without portfolio

(4) The annual salary of every Parliamentary Assistant is \$9,297. Salary of Parliamentary Assistant

**2.** This Act shall be deemed to have come into force on the 1st day of April, 1988. Commencement

**3.** The short title of this Act is the *Executive Council Amendment Act, 1989*. Short title





## CHAPTER 21

### **An Act for granting to Her Majesty certain sums of money for the Public Service for the fiscal year ending the 31st day of March, 1989**

*Assented to March 2nd, 1989*

#### **MOST GRACIOUS SOVEREIGN:**

Whereas it appears by messages from the Honourable Lincoln Alexander, Lieutenant Governor of the Province of Ontario, and from the estimates and supplementary estimates accompanying the same, that the sums mentioned in the Schedule to this Act are required to defray certain charges and expenses of the public service of this Province, not otherwise provided for, for the fiscal year ending the 31st day of March, 1989; may it therefore please Your Majesty that it be enacted and it is hereby enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, as follows:

**1.—(1)** There may be paid out of the Consolidated Revenue Fund a sum not exceeding in the whole \$34,103,741,677 to be applied towards defraying the several charges and expenses of the public service, not otherwise provided for, from the 1st day of April, 1988, to the 31st day of March, 1989, as set forth in the Schedule to this Act, and, subject to subsection (2), such sum shall be paid and applied only in accordance with the votes and items of the estimates and supplementary estimates upon which the Schedule is based.

Supply  
granted for  
1988-89

**(2)** Where, in the fiscal year ending the 31st day of March, 1989, powers and duties are assigned and transferred from one minister of the Crown to another minister of the Crown, the appropriate sums in the votes and items of the estimates and supplementary estimates upon which the Schedule is based that are approved to defray the charges and expenses of the public service in the exercise and performance of such powers and duties, may be assigned and transferred from time to time as required by certificate of the Management Board of Cabinet to the ministry administered by the minister to whom the powers and duties are so assigned and transferred.

Exception

- Accounting  
for  
expenditure
2. The due application of all moneys expended under this Act shall be accounted for to Her Majesty.
- Commence-  
ment
3. This Act comes into force on the day it receives Royal Assent.
- Short title
4. The short title of this Act is the *Supply Act, 1989*.

SCHEDULE			
	ESTIMATES	SUPPLEMENTARY ESTIMATES	TOTAL
	\$	\$	\$
Agriculture and Food.....	540,152,500		540,152,500
Assembly, Office of the.....	79,674,100	2,728,900	82,403,000
Attorney General.....	395,549,300	1,477,400	397,026,700
Cabinet Office.....	8,985,600		8,985,600
Chief Election Officer, Office of the...	618,600		618,600
Citizenship .....	45,444,800		45,444,800
Colleges and Universities.....	2,566,657,100		2,566,657,100
Community and Social Services.....	4,263,842,200		4,263,842,200
Consumer and Commercial Relations.....	147,333,900		147,333,900
Correctional Services.....	394,268,400		394,268,400
Culture and Communications.....	251,909,500	1,096,700	253,006,200
Disabled Persons, Office for.....	7,638,600		7,638,600
Education.....	4,299,641,300	300,000,000	4,599,641,300
Energy.....	44,023,900		44,023,900
Environment.....	442,447,400	7,000,000	449,447,400
Financial Institutions.....	32,618,000	3,258,100	35,876,100
Government Services.....	637,082,700	10,000	637,092,700
Health.....	12,660,423,100		12,660,423,100
Housing.....	440,734,500	2,592,000	443,326,500
Industry, Trade and Technology.....	185,860,100	4,098,000	189,958,100
Intergovernmental Affairs.....	8,567,900		8,567,900
Labour.....	120,054,300		120,054,300
Lieutenant Governor, Office of the.....	529,400		529,400
Management Board.....	243,738,900		243,738,900
Municipal Affairs.....	976,915,100		976,915,100
Native Affairs, Office Responsible for..	4,884,100		4,884,100
Natural Resources.....	542,528,800	2,000,000	544,528,800
Northern Development and Mines.....	303,233,100		303,233,100
Ombudsman, Office of the.....	7,122,700		7,122,700
Premier, Office of the.....	2,115,600		2,115,600
Provincial Auditor, Office of the.....	6,923,000		6,923,000
Revenue.....	810,283,300		810,283,300
Senior Citizens Affairs, Office Responsible for.....	9,283,600		9,283,600
Skills Development.....	406,299,500		406,299,500
Solicitor General.....	427,888,400		427,888,400
Tourism and Recreation.....	191,478,700		191,478,700
Transportation .....	2,059,200,077	13,500,000	2,072,700,077
Treasury and Economics.....	182,498,900		182,498,900
Women's Issues, Office Responsible for..	17,529,600		17,529,600
Total	33,765,980,577	337,761,100	34,103,741,677

## CHAPTER 22

### An Act to amend the Children's Law Reform Act

*Assented to June 20th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 20 of the *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:**

(4a) Where the parents of a child live separate and apart and the child is in the custody of one of them and the other is entitled to access under the terms of a separation agreement or order, each shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other.

Duty of  
separated  
parents

**2.—(1) Subsection 24 (1) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by inserting after "application" in the first line "or motion".**

**(2) Subsections 24 (2) and (3) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, are repealed and the following substituted therefor:**

(2) In determining the best interests of a child for the purpose of an application or motion under this Part in respect of custody of or access to a child, a court shall consider all the child's needs and circumstances, including,

Best interests  
of child

(a) the love, affection and emotional ties between the child and,

(i) each person seeking custody or access,

(ii) other members of the child's family residing with him or her, and

(iii) persons involved in the child's care and upbringing;



- (b) the child's views and preferences, if they can reasonably be ascertained;
- (c) the length of time the child has lived in a stable home environment;
- (d) the ability of each person seeking custody or access to act as a parent;
- (e) the ability and willingness of each person seeking custody to provide the child with guidance, education and necessities of life and to meet any special needs of the child;
- (f) any plans proposed for the child's care and upbringing;
- (g) the permanence and stability of the family unit with which it is proposed that the child will live; and
- (h) the relationship, by blood or through an adoption order, between the child and each person who is a party to the application or motion.

Domestic  
violence to  
be considered

(3) In assessing a person's ability to act as a parent, the court shall consider the fact that the person has at any time committed violence against his or her spouse or child, against his or her child's parent or against another member of the person's household.

Restrictions  
on consid-  
eration of  
other past  
conduct

(4) Other than the conduct referred to in subsection (3), a person's past conduct may be considered only if the court is satisfied that it is relevant to the person's ability to act as a parent.

**3. The said Act is amended by adding thereto the following section:**

Application  
to fix times  
or days of  
access

**28a.**—(1) If an order in respect of access to a child provides for a person's access to the child without specifying times or days, a party to the order may apply to the court that made it to vary it by specifying times or days.

Order

(2) The court may vary the order by specifying the times or days agreed to by the parties, or the times or days the court considers appropriate if the parties do not agree.

Separation  
agreements

1986, c. 4

(3) Subsection (1) also applies, with necessary modifications, in respect of a separation agreement under section 54 of the *Family Law Act, 1986* or a predecessor of that section that

provides for a person's access to a child without specifying times or days.

(4) Subsection (1) does not apply in respect of orders made under the *Divorce Act*, 1985 (Canada) or a predecessor of that Act. Exception  
S.C. 1986,  
c. 4

**4. Section 29 of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:**

(2) Subsection (1) does not apply in respect of orders made under subsection 28a (2) (fixing times or days of access) or 35a (2) or (6) (access enforcement, etc.). Exception

**5. Subsection 30 (14) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:**

(14) The court may require one party to pay all the fees and expenses of the person appointed under subsection (1) if the court is satisfied that payment would cause the other party or parties serious financial hardship. Idem,  
serious  
financial  
hardship

**6. Subsection 31 (10) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:**

(10) The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship. Idem, serious  
financial  
hardship

**7. The said Act is further amended by adding thereto the following section:**

**35a.**—(1) A person in whose favour an order has been made for access to a child at specific times or on specific days and who claims that a person in whose favour an order has been made for custody of the child has wrongfully denied him or her access to the child may make a motion for relief under subsection (2) to the court that made the access order. Motion to  
enforce right  
of access

(2) If the court is satisfied that the responding party wrongfully denied the moving party access to the child, the court may, by order, Order for  
relief

(a) require the responding party to give the moving party compensatory access to the child for the period agreed to by the parties, or for the period

the court considers appropriate if the parties do not agree;

- (b) require supervision as described in section 35;
- (c) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the wrongful denial of access;
- (d) appoint a mediator in accordance with section 31 as if the motion were an application for access.

Period of  
compensatory  
access

(3) A period of compensatory access shall not be longer than the period of access that was wrongfully denied.

What  
constitutes  
wrongful  
denial of  
access

(4) A denial of access is wrongful unless it is justified by a legitimate reason such as one of the following:

1. The responding party believed on reasonable grounds that the child might suffer physical or emotional harm if the right of access were exercised.
2. The responding party believed on reasonable grounds that he or she might suffer physical harm if the right of access were exercised.
3. The responding party believed on reasonable grounds that the moving party was impaired by alcohol or a drug at the time of access.
4. The moving party failed to present himself or herself to exercise the right of access within one hour of the time specified in the order or the time otherwise agreed on by the parties.
5. The responding party believed on reasonable grounds that the child was suffering from an illness of such a nature that it was not appropriate in the circumstances that the right of access be exercised.
6. The moving party did not satisfy written conditions concerning access that were agreed to by the parties or that form part of the order for access.
7. On numerous occasions during the preceding year, the moving party had, without reasonable notice and excuse, failed to exercise the right of access.



8. The moving party had informed the responding party that he or she would not seek to exercise the right of access on the occasion in question.

(5) A person in whose favour an order has been made for custody of a child and who claims that a person in whose favour an order has been made for access to the child has, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, may make a motion for relief under subsection (6) to the court that made the access order.

Motion re failure to exercise of right of access, etc.

(6) If the court is satisfied that the responding party, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, the court may, by order,

Order for relief

- (a) require supervision as described in section 35;
- (b) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the failure to exercise the right of access or to return the child as the order requires;
- (c) appoint a mediator in accordance with section 31 as if the motion were an application for access.

(7) A motion under subsection (1) or (5) shall be heard within ten days after it has been served.

Speedy hearing

(8) A motion under subsection (1) or (5) shall not be made more than thirty days after the alleged wrongful denial or failure.

Limitation

(9) The motion shall be determined on the basis of oral evidence only, unless the court gives leave to file an affidavit.

Oral evidence only

(10) At the hearing of the motion, unless the court orders otherwise, evidence shall be admitted only if it is directly related to,

Scope of evidence at hearing limited

- (a) the alleged wrongful denial of access or failure to exercise the right of access or return the child as the order requires; or
- (b) the responding party's reasons for the denial or failure.

Separation  
agreement  
may be filed  
with court  
1986, c. 4

(11) A person who is a party to a separation agreement made under section 54 of the *Family Law Act, 1986* or a predecessor of that section may file the agreement with the clerk of the Provincial Court (Family Division) or of the Unified Family Court, together with the person's affidavit stating that the agreement is in effect and has not been set aside or varied by a court or agreement.

Effect of  
filing

(12) When a separation agreement providing for access to a child at specific times or on specific days is filed in this manner, subsections (1) and (5) apply as if the agreement were an order of the court where it is filed.

Motions  
made in bad  
faith

(13) If the court is satisfied that a person has made a motion under subsection (1) or (5) in bad faith, the court may prohibit him or her from making further motions without leave of the court.

Idem  
S.C. 1986,  
c. 4

(14) Subsections (1) and (5) do not apply in respect of orders made under the *Divorce Act, 1985* (Canada) or a predecessor of that Act.

Application

1989, c. 22

(15) Subsections (1) and (5) do not apply in respect of a denial of access or a failure to exercise a right of access or to return a child as the order or agreement requires that takes place before the day section 7 of the *Children's Law Reform Amendment Act, 1989* comes into force.

**8. Subsection 36 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 8, section 4, is repealed and the following substituted therefor:**

Order  
restraining  
harassment

(1) On application, a court may make an interim or final order restraining a person from molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or from communicating with the applicant or children, except as the order provides, and may require the person to enter into the recognizance that the court considers appropriate.

Commence-  
ment

**9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.**

Short title

**10. The short title of this Act is the *Children's Law Reform Amendment Act, 1989*.**

## CHAPTER 23

### **An Act to revise several Acts related to Aggregate Resources**

*Assented to June 20th, 1989*

#### CONTENTS

##### Section

##### 1. Definitions

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Definitions**

**1.—(1)** In this Act,

“aggregate” means gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, rock other than metallic ores, or other prescribed material;

“Board” means the Ontario Municipal Board;

“Commissioner” means the Mining and Lands Commissioner;

“earth” does not include topsoil and peat;

“environment” means the air, land and water, or any combination or part thereof of the Province of Ontario;

“established pit or quarry” means a pit or quarry from which a substantial amount of aggregate has been excavated within the two-year period immediately before the part of Ontario in which the pit or quarry is located was designated under subsection 5 (2);

“excavate” includes the preparation of land for excavation and removal of hills, sand dunes, knolls, stones and rocks other than metallic ores from the general surface of the ground;

“final rehabilitation” means rehabilitation in accordance with this Act, the regulations, the site plan and the conditions of the licence or permit performed after the excavation of aggregate and the progressive rehabilitation, if any, have been completed;

“highway” has the same meaning as in the *Public Transportation and Highway Improvement Act* and includes an unopened road allowance; R.S.O. 1980,  
c. 421

“inspector” means any employee of the Ministry designated in writing by the Minister as an inspector for the purposes of this Act;

“land under water” means the bed, bank, beach, shore, bar, flat or water of or in any lake, river, stream or other waterbody or adjoining any channel or entrance thereto but does not include a waterbody resulting from excavation of aggregate below the water table;

“licence” means a licence for a pit or quarry issued under this Act;

“licensee” means a person who holds a licence;

“management” means the provision for the identification, orderly development and protection of the aggregate resources of Ontario;

“Minister” means the Minister of Natural Resources;

“Ministry” means the Ministry of Natural Resources;

“operate”, when used in relation to a pit or quarry, means “work” and includes all activities associated with a pit or quarry that are carried out on the site;

“permit” means an aggregate permit or a wayside permit issued under this Act;

“permittee” means a person who holds a permit;

“person” includes a public authority;

“pit” means land or land under water from which unconsolidated aggregate is being or has been excavated, and that has not been rehabilitated, but does not mean land or land under water excavated for a building or other work on the excavation site or in relation to which an order has been made under subsection (3);

“prescribed” means prescribed by the regulations;

“progressive rehabilitation” means rehabilitation done sequentially, within a reasonable time, in accordance with this Act, the regulations, the site plan and the conditions of the licence or permit during the period that aggregate is being excavated;

R.S.O. 1980,  
c. 303

“public authority” means the Crown, a municipality, a local board as defined in the *Municipal Affairs Act* or a local roads board;

“quarry” means land or land under water from which consolidated aggregate is being or has been excavated, and that has not been rehabilitated, but does not mean land or land under water excavated for a building or other work on the excavation site or in relation to which an order has been made under subsection (3);

“regional municipality” includes a district municipality and The Municipality of Metropolitan Toronto;

“regulations” means the regulations made under this Act;

“rehabilitate” means to treat land from which aggregate has been excavated so that the use or condition of the land,

(a) is restored to its former use or condition, or

(b) is changed to another use or condition that is or will be compatible with the use of adjacent land;

“road” has the same meaning as highway;

“site” means the land or land under water to which a licence or permit or an application therefor relates;

“Treasurer” means the Treasurer of Ontario and Minister of Economics;

1983, c. 1

“zoning by-law” means a by-law passed under section 34 or 37 of the *Planning Act, 1983* or any predecessor thereof and includes an order made under clause 46 (1) (a) of the



*Planning Act, 1983* or any predecessor thereof and a land use regulation made under subsection 4 (1) of the *Parkway Belt Planning and Development Act* or any predecessor thereof and includes zoning control by a development permit issued under the *Niagara Escarpment Planning and Development Act*. R.S.O. 1980, c. 378, s. 1, *amended*. 1983, c. 1  
R.S.O. 1980, c. 368  
R.S.O. 1980, c. 316

(2) The Minister may, in his or her absolute discretion, determine in cases where doubt exists, whether an excavation site is a pit or quarry. Determination by Minister of pit or quarry in cases of doubt

(3) The Minister, if of the opinion that the primary purpose of an excavation is not for the production of aggregate, may in his or her absolute discretion by order declare that the land or land under water on which the excavation is situate is not a pit or quarry for the purposes of this Act. Order that an excavation is not a pit or quarry

(4) The Minister, if the matter appears to warrant it, shall serve notice of a proposed order under subsection (3), including reasons therefor, upon the clerk of the local municipality in which the excavation is located and, where applicable, upon the clerk of the regional municipality or county, as the case may be, for their information and comment. Notice to municipality

(5) The Minister may not issue the order until the Minister is served with comments by the municipalities or thirty days after service of the notice by the Minister, whichever occurs first. *New*. Delay in relief

## PART I

### GENERAL

**2.** The purposes of this Act are, Purposes of Act

- (a) to provide for the management of the aggregate resources of Ontario;
- (b) to control and regulate aggregate operations on Crown and private lands;
- (c) to require the rehabilitation of land from which aggregate has been excavated; and
- (d) to minimize adverse impact on the environment in respect of aggregate operations. *New*.

**3.—(1)** The Minister is responsible for the administration of this Act and the regulations. Administration of Act

Idem

(2) In administering this Act, the Minister may,

- (a) initiate research related to technical matters pertaining to,
    - (i) the aggregate industry, including the transportation of aggregate and the rehabilitation of pits and quarries,
    - (ii) underground mining of aggregate, and
    - (iii) aggregate excavation from beneath water;
  - (b) initiate studies of geological deposits that may yield aggregate of commercial qualities and quantities;
  - (c) estimate from time to time the demand that will be made for aggregate and establish policies for the supply thereof;
  - (d) collect, analyze and publish statistics related to the aggregate industry;
  - (e) initiate studies related to the uses of aggregate and the economics and operations of the aggregate industry;
  - (f) advise ministries and municipalities on planning matters related to aggregate;
  - (g) initiate studies related to abandoned pits and quarries;
  - (h) initiate studies on environmental and social matters related to pits and quarries;
  - (i) convene conferences and conduct seminars and educational and training programs related to pits and quarries and the aggregate industry;
  - (j) establish and maintain demonstration and experimental rehabilitation projects for pits and quarries;
  - (k) employ any person to perform work in connection with any matter mentioned in this Act; and
  - (l) consult with ministries, municipalities and agencies.
- New.

4.—(1) The Minister may designate in writing any employee of the Ministry as an inspector for the purposes of this Act. R.S.O. 1980, c. 378, s. 1 (b), *amended*. Designation of inspectors

(2) An inspector, for the purpose of carrying out assigned duties, Powers of inspectors

- (a) may enter, at any reasonable time, any land, vessel or business premises that is or appears to be used or has or appears to have been used in respect of a pit or quarry or any activity or use related to aggregate or rehabilitation;
- (b) may require the production of a licence, a permit, any record or document respecting aggregate or rehabilitation, a report or a survey and may inspect and make copies thereof;
- (c) may, upon giving a receipt therefor, remove any licence, permit, record or document produced under clause (b) and make copies thereof; and
- (d) may, alone or in conjunction with other persons possessing special or expert knowledge, make examinations, tests or inquiries and take or remove samples of any material. R.S.O. 1980, c. 378, s. 13 (1), *amended*.

(3) An inspector who makes a copy under clause (2) (c) shall do so with dispatch and shall promptly return the original licence, permit, record or document. Copies

(4) Any copy made as provided in clause (2) (b) or (c) and certified to be a true copy by the inspector who carried out the inspection is admissible in evidence in any action, proceeding or prosecution as proof, in the absence of evidence to the contrary, of the original licence, permit, record or document and its contents. *New*. Idem

5.—(1) This Act and the regulations apply to, Application

- (a) all aggregate and topsoil that is the property of the Crown or that is on land the surface rights of which are the property of the Crown;
- (b) private land in parts of Ontario that have been designated under the *Pits and Quarries Control Act* or a predecessor thereof;

R.S.O. 1980,  
c. 378



(c) private land in parts of Ontario that are designated under subsection (2); and

(d) all land under water. *New.*

Designation  
of parts

(2) The Lieutenant Governor in Council may make regulations designating parts of Ontario for the purpose of clause (1) (c). R.S.O. 1980, c. 378, s. 2, *amended*.

Redesignation  
of designated  
parts  
R.S.O. 1980,  
c. 378

(3) The Lieutenant Governor in Council may make regulations redesignating the parts of Ontario that have been designated under the *Pits and Quarries Control Act* or a predecessor thereof. *New.*

Act binds the  
Crown

6. This Act binds the Crown except where it specifically states otherwise. *New.*

## PART II

### LICENCES

Licences  
required

7.—(1) No person shall, in a part of Ontario designated under section 5, operate a pit or quarry on land that is not land under water and the surface rights of which are not the property of the Crown except under the authority of and in accordance with a licence.

Application  
for licence

(2) Any person may apply to the Minister, on a form provided by the Minister,

(a) for a Class A licence to excavate annually more than 20,000 tonnes of aggregate from a pit or quarry; or

(b) for a Class B licence to excavate annually 20,000 tonnes or less of aggregate from a pit or quarry.

Idem

(3) Every application for a licence must be accompanied by,

(a) ten copies of the site plan referred to in section 8;

(b) if the application is for a Class A licence, ten copies of the report referred to in section 9;

(c) the information referred to in section 10; and

(d) the prescribed application fee. R.S.O. 1980, c. 378, s. 4, *amended*.

(4) The number of copies of a site plan or of a report that are required to be submitted under subsection (3) may be varied, in specific situations, by the Minister. Copies

(5) The Minister may require an applicant for a licence to furnish additional information in such form and manner as is considered necessary, and, until the information is furnished, further consideration of the application may be refused. Additional information  
*New.*

**8.—(1)** The site plan accompanying an application for a Class A licence must show, Site plans for licences

- (a) a key map showing the location of the site;
- (b) a general description of the site, including lot and concession lines, if any;
- (c) the shape, dimensions and hectarage of the site;
- (d) the use of the land and the location and the use of the buildings and other structures within 150 metres of the site of the pit or within 500 metres of the site of the quarry;
- (e) the location, dimensions and use of the buildings and other structures existing or proposed to be erected on the site;
- (f) the location of the excavation setback limits;
- (g) the location and type of existing and proposed fences;
- (h) the location of existing and proposed tree screens and the species, size and types of the trees;
- (i) the location, dimensions and design of earth berms;
- (j) any significant natural and man made features;
- (k) the location and size of existing and proposed stockpiles of topsoil, subsoil and overburden and the location and size of proposed aggregate stockpile areas;
- (l) the topography of the site including existing and estimated final contours;

- (m) every existing and proposed entrance to and exit from the site;
- (n) all existing and proposed major roads on the site;
- (o) the water table and any existing surface water on and surrounding the site and proposed water diversion, storage and drainage facilities on the site and points of discharge to surface waters;
- (p) subject to available information, the location of water wells on and within 300 metres of the site;
- (q) the maximum depth of excavation and whether it is intended to excavate below the water table;
- (r) the sequence and direction of operation of the pit or quarry;
- (s) the progressive rehabilitation and final rehabilitation plans; and
- (t) any other necessary information respecting the site. R.S.O. 1980, c. 378, s. 4 (2), *amended*.

Idem

(2) The information required under subsection (1) must be presented in at least three separate drawings under the headings,

- (a) Existing Features;
- (b) Operational Plan; and
- (c) Progressive Rehabilitation and Final Rehabilitation Plans.

Idem

(3) For the purpose of subsection (2), the drawings must be at a scale of 1:2000, 1:5000 or, in any particular case, at such other scale as the Minister may approve.

Site plan

(4) Every site plan accompanying an application for a Class A licence must be prepared under the direction of and certified by a professional engineer who is a member of the Association of Professional Engineers of Ontario, a land surveyor who is a member of the Association of Ontario Land Surveyors, a landscape architect who is a member of the Ontario Association of Landscape Architects, or any other qualified person approved in writing by the Minister. *New.*



(5) The site plan accompanying an application for a Class B licence must show,

Site plans for  
Class B  
licences

- (a) a key map showing the location of the site;
- (b) a general description of the site, including lot and concession lines, if any;
- (c) the shape, dimensions and hectarage of the site;
- (d) the use of the land and the location and use of the buildings and other structures within 150 metres of the site of the pit or within 500 metres of the site of the quarry;
- (e) the location, dimensions and use of the buildings and other structures existing or proposed to be erected on the site;
- (f) the location of the excavation setback limits;
- (g) the location and type of existing and proposed fences;
- (h) the location of existing and proposed tree screens and the species, size and types of the trees;
- (i) the location, dimensions and design of earth berms;
- (j) any significant natural and man made features;
- (k) the location and size of existing and proposed stock-piles of topsoil, subsoil and overburden and the location and size of proposed aggregate stockpile areas;
- (l) the existing and estimated final elevations of the site;
- (m) every existing and proposed entrance to and exit from the site;
- (n) any existing surface water on and surrounding the site and proposed water diversion, storage and drainage facilities on the site and points of discharge to surface waters;
- (o) subject to available information, the location of water wells on and within 300 metres of the site;

- (p) the maximum depth of excavation and whether it is intended to excavate below the water table;
- (q) the sequence and direction of operation of the pit or quarry;
- (r) the progressive rehabilitation and final rehabilitation plans;
- (s) the approximate scale; and
- (t) any other necessary information respecting the site. R.S.O. 1980, c. 378, s. 4 (3), *amended*.

Signature

(6) Every site plan accompanying an application for a Class B licence must be in a style and manner acceptable to the Minister and must be signed by the applicant.

Plans  
property of  
the Crown

(7) Every site plan submitted with an application under this section becomes the property of the Crown upon the licence applied for being issued. *New*.

Report

**9.—**(1) The report accompanying an application for a Class A licence must be signed by the author and must provide information for evaluation by the Minister,

- (a) as to the suitability of the progressive rehabilitation and final rehabilitation plans having regard to the adjacent lands;
- (b) describing the environment that may be expected to be affected by the pit or quarry operation and any proposed remedial measures that are considered necessary;
- (c) describing the social and economic effects that may be expected as a result of the pit or quarry operation;
- (d) respecting the quality and quantity of the aggregate on the site;
- (e) as to the main haulage routes and proposed truck traffic to and from the site;
- (f) supplementing clause 8 (1) (o);
- (g) describing the location and size of existing and proposed stockpiles of topsoil, subsoil and overburden

and the location and size of proposed aggregate stockpile areas;

- (h) respecting any planning and land use considerations;
- (i) setting out the reasons for any conclusions in the report; and
- (j) any other necessary information respecting the site.

(2) Every report submitted with an application under this section becomes the property of the Crown upon the licence applied for being issued. *New.*

Reports  
property of  
the Crown

**10.** An applicant for a licence must furnish information satisfactory to the Minister describing the zoning by-laws applicable to the site and adjacent lands. *New.*

Zoning  
by-laws

**11.—(1)** The Minister, upon being satisfied that an application for a licence and the documents accompanying it comply with this Act and the regulations, shall, where applicable, serve a copy of the application and accompanying documents upon the clerk of the regional municipality or county, as the case may be, and upon the clerk of the local municipality in which the site is located for their information and comment.

Copies to  
municipalities

(2) On the day that the Minister effects service under subsection (1), the Minister shall serve the applicant with notice that the applicant must cause notice of the application,

Notice by  
Minister

- (a) to be published in the prescribed form in two successive issues of a newspaper or newspapers having general circulation in the locality in which the site is located; and
- (b) to be given in signs placed in the prescribed manner on the site.

(3) The applicant shall notify the Minister when the publication of the notice and the placement of the signs have been completed.

Notice of  
publication

(4) Any person may serve upon the Minister, within forty-five days after the second publication of the notice under clause (2) (a) or within such further period as the Minister may allow, a notice of objection to the issue of the licence applied for and the reasons therefor.

Notice of  
objection



Idem

(5) Upon receipt of a notice under subsection (4), the Minister shall provide the applicant with a copy thereof. *New.*

Notice  
requiring  
hearing

(6) Any person who has served notice under subsection (4) may, in addition, serve upon the Minister, within the period provided under subsection (4), a notice that the person requires a hearing of the matter before the Board.

Reference to  
Board for a  
hearing

(7) Upon receipt of a notice under subsection (6) that, in the opinion of the Minister, discloses an interest in the matter that is sufficiently substantial to warrant a hearing and is not frivolous or vexatious, the Minister shall refer the application and the objections to the Board for a hearing. R.S.O. 1980, c. 378, s. 5 (3), *amended.*

Idem

(8) The Minister may, on his or her own motion, refer an application and objections, if any, to the Board for a hearing. R.S.O. 1980, c. 378, s. 5 (4), *amended.*

What Board  
may consider  
at one  
hearing  
1983, c. 1

(9) The Board may consider an application for an amendment to any relevant planning matter referred to it under the *Planning Act, 1983* and an application referred to it under subsection (7) or (8) at the same hearing. *New.*

Matters to be  
considered by  
Minister

**12.** The Minister in considering whether to issue or refuse a licence shall have regard to,

- (a) the effect of the operation of the pit or quarry on the environment;
- (b) the effect of the operation of the pit or quarry on nearby communities;
- (c) any comments provided by the municipality in which the site is located;
- (d) the suitability of the progressive rehabilitation and final rehabilitation plans for the site;
- (e) any possible effects on ground and surface water resources;
- (f) any possible effects of the operation of the pit or quarry on agricultural resources;
- (g) any planning and land use considerations;
- (h) the main haulage routes and proposed truck traffic to and from the site;

- (i) the quality and quantity of the aggregate on the site;
- (j) the recommendation of the Board under section 21, if such a recommendation is made; and
- (k) such other matters as are considered appropriate. R.S.O. 1980, c. 378, s. 6 (1), *amended*.

**13.—**(1) The Minister may issue a licence, subject to such conditions as the Minister considers necessary. R.S.O. 1980, c. 378, s. 6 (4), *amended*. Issue of licences

(2) Subject to section 20, the Minister may, at any time, add a condition to a licence or rescind or vary a condition of a licence. Changes of conditions

(3) A licensee and any municipality served with notice under clause 20 (4) (a) may provide the Minister with comments within thirty days after service of the notice and the Minister shall take no action until the thirty days have elapsed. No action until 30 days elapsed after notice by Minister

(4) The Minister may take the proposed action before the thirty days have elapsed if comments have been received from all persons notified and if the licensee waives the right under subsection 20 (6) to require a hearing. Exception

(5) The Minister may, subject to subsections 69 (3) and 70 (3), issue a licence only if the site complies with all relevant zoning by-laws. Zoning by-laws

(6) The Minister, if in doubt as to whether there is compliance with a zoning by-law, may require the applicant to refer the matter to the Divisional Court for a declaratory judgment on the matter. Reference to court

(7) The Minister, on issuing a licence, shall serve a copy of it upon the clerk of the regional municipality or county, as the case may be, and upon the clerk of the local municipality in which the site is located for their information. *New.* Copies to municipalities

**14.—**(1) Every licensee shall pay to the Treasurer an annual licence fee, at a time specified by the Minister, in an amount equal to the application fee paid for the licence or calculated by multiplying the number of tonnes of aggregate removed from the site during the previous year by the prescribed rate per tonne, whichever is greater. Annual licence fees

- Revocation (2) If the required licence fee is not paid, the Minister may revoke the licence.
- No notice or hearing (3) Subsections 20 (3), (5) and (6) do not apply to a licence revoked under subsection (2).
- Disbursal of annual licence fees (4) The prescribed percentage of the total of the annual licence fees collected shall be disbursed to such municipalities and in such amounts, manner and for such purposes as are prescribed.
- Rehabilitation of abandoned pits and quarries (5) The prescribed percentage of the total of the annual licence fees collected shall be set apart for the purposes mentioned in subsection 33 (2).
- Unpaid licence fees (6) Any unpaid annual licence fee is a debt due to the Crown and may be recovered by the Crown in any court of competent jurisdiction. *New.*
- Duties of licensees **15.** Every licensee shall operate the licensee's pit or quarry in accordance with this Act, the regulations, the site plan and the conditions of the licence. R.S.O. 1980, c. 378, s. 3, s.4 (4), *part, amended.*
- Amendment of site plans **16.—**(1) Subject to section 20, the Minister may at any time require a licensee to amend the site plan. *New.*
- Idem (2) A licensee may amend the site plan at any time with the approval in writing of the Minister. R.S.O. 1980, c. 378, s. 4 (4), *part, amended.*
- Idem (3) The Minister may require any amended site plan to be prepared under the direction of and certified by a person referred to in subsection 8 (4).
- No action until 30 days elapsed after notice by Minister (4) A licensee and any municipality served with notice under clause 20 (4) (b) or (c) may provide the Minister with comments within thirty days after service of the notice and the Minister shall take no action until the thirty days have elapsed.
- Exception (5) The Minister may take the proposed action before the thirty days have elapsed if comments have been received from all persons notified and, in the case of a proposal to require the amendment of a site plan, if the licensee waives the right under subsection 20 (6) to require a hearing. *New.*
- Inspection and review **17.—**(1) For the purpose of assessing the licensee's compliance with this Act, the regulations, the site plan and the con-



ditions of the relevant licence, the Minister, at least once a year,

- (a) shall cause each site to be inspected;
- (b) shall cause a review of each site plan and the conditions of each licence; and
- (c) shall consider all comments provided by the municipalities in which the site is located concerning the licensee's compliance with this Act, the regulations, the site plan and the conditions of the relevant licence. R.S.O. 1980, c. 378, s. 7 (1), *amended*.

(2) An inspector, upon completing an inspection of a site, shall prepare a written report that shall include a description of any practice or procedure of the licensee or any matter related to the site that, in the opinion of the inspector, is a contravention of this Act, the regulations, the site plan or the conditions of the relevant licence.

Written  
report by  
inspector

(3) Any person may, during normal office hours of the Ministry, examine any report made under subsection (2) and, upon a request therefor and payment of a reasonable fee, such person shall be provided with a copy of the report or extracts therefrom.

Copy of  
report

(4) For the purpose of each fourth review under subsection (1), the Minister shall, where applicable, request in writing that the council of the regional municipality or county, as the case may be, and the council of the local municipality in which each pit or quarry is located send to him or her, within forty-five days after receiving the request, their comments on each pit or quarry concerning the licensee's compliance with this Act, the regulations, the site plan and the conditions of the relevant licence.

Municipal  
comments  
every four  
years

(5) If a copy of a site plan is served upon the Minister under subsection 69 (5), each fourth review shall be calculated from the year in which service was made upon the Minister.  
*New.*

Idem

**18.—**(1) Upon application therefor accompanied by the prescribed transfer fee, the Minister may consent to the transfer of a licence. R.S.O. 1980, c. 378, s.14, *amended*.

Transfer of  
licence

(2) Any municipality served with notice under clause 20 (4) (d) may provide the Minister with comments on compliance with this Act, the regulations, the site plan and the conditions of the licence within thirty days after service of the

Idem

notice and the Minister shall take no action until the thirty days have elapsed or comments have been received, whichever occurs first.

Transfer of  
rehabilitation  
security

(3) When a licence is transferred, any sum in the rehabilitation security account of the transferor shall be transferred to an account in the name of the transferee and the right, title and interest in that sum vest in the transferee.

Copy to  
municipalities

(4) When a licence is transferred, the Minister shall, where applicable, serve a copy of the licence in the name of the transferee upon the clerk of the regional municipality or county, as the case may be, and upon the clerk of the local municipality in which the site is located for their information.

Death of  
licensee

(5) On the death of an individual who holds a licence as a sole proprietor, the personal representative of the individual may continue to operate the pit or quarry for a period of one year as if the licence were issued to the personal representative.

Idem

(6) A personal representative who operates a pit or quarry under subsection (5) shall notify the Minister of the death of the licensee within one month thereafter. *New.*

Surrender of  
licence

**19.**—(1) Upon being satisfied that a licensee's annual licence fee and rehabilitation security, whenever payable, have been paid before the licensee applies to surrender a licence and that the rehabilitation has been performed in accordance with this Act, the regulations, the site plan and the conditions of the licence, the Minister may accept the surrender of the licence.

Disposition  
of surplus  
rehabilitation  
moneys

(2) Any sum remaining in a former licensee's rehabilitation security account when the Minister accepts surrender of the licence shall be paid by the Treasurer to the former licensee. *New.*

Refusal to  
issue and  
refusal to  
consent to  
transfer of  
licence

**20.**—(1) The Minister may refuse to issue or refuse to consent to the transfer of a licence. R.S.O. 1980, c. 378, s. 6 (1), *part, amended.*

Revocation  
of licences

(2) The Minister may revoke a licence for any contravention of this Act, the regulations, the site plan or the conditions of the licence. R.S.O. 1980, c. 378, s. 7 (2), *amended.*

Notice to  
licensee

(3) If the Minister,

- (a) refuses to issue a licence and the application has not been referred to the Board for a hearing under section 11 or 60;
- (b) attaches a condition to a licence issued under subsection 69 (3) that adds, rescinds or varies a condition of the licence it replaces;
- (c) refuses to consent to the transfer of a licence; or
- (d) revokes a licence,

he or she shall serve forthwith notice thereof, including reasons therefor, upon the applicant or licensee.

(4) If the Minister,

*Idem*

- (a) proposes to add a condition to a licence after its issue or to rescind or vary a condition of a licence;
- (b) proposes to require the amendment of a site plan;
- (c) proposes to approve the amendment of a site plan; or
- (d) proposes to consent to the transfer of a licence,

he or she shall serve forthwith notice thereof, including reasons therefor, upon the licensee and where, in the opinion of the Minister, the matter is of importance and it is appropriate to do so, upon the clerk of the regional municipality or county, as the case may be, and upon the clerk of the local municipality in which the site is located for their information.

(5) Any action of the Minister under clause (3) (a), (b), (c) or (d) is effective as soon as the required notice is served upon the applicant or licensee and, despite the fact that the applicant or licensee requires a hearing by the Board, remains effective until the Minister takes action under subsection 21 (4).

*Time of taking effect*

(6) An applicant or licensee who is served with a notice under subsection (3) or (4) is entitled to a hearing by the Board if the applicant or licensee, within thirty days after being served, serves the Minister with a notice that a hearing is required.

*Entitlement to hearing*

(7) The Minister, if served with a notice under subsection (6), shall, within thirty days after being served, refer the mat-

*Hearing*



ter to the Board for a hearing. R.S.O. 1980, c. 378, s. 8, *amended*.

Where no  
hearing

(8) If the Minister proposes an action referred to in clause (4) (a) or (b) and the applicant or licensee does not require a hearing under subsection (6), the Minister may carry out the proposal. *New*.

Hearing by  
Board

**21.**—(1) The Board shall hold a hearing on a matter referred to it under section 11, 20 or 60, and the applicant or licensee, the Minister and such other persons as the Board specifies shall be parties to the hearing.

Procedure

(2) A hearing by the Board shall be conducted in accordance with the rules, practices and procedures as determined by the Board under the *Ontario Municipal Board Act*, except that section 94 of that Act does not apply.

R.S.O. 1980,  
c. 347

Report of  
Board

(3) The Board shall, at the conclusion of a hearing under this section, make a report to the Minister setting out its findings and its recommendations as to the issue involved and shall send a copy of its report to each party to the hearing.

Decision of  
Minister

(4) After considering the report of the Board, the Minister may take such action as the Minister considers appropriate and shall serve notice of the decision and the reasons therefor upon the other parties to the hearing and upon any municipality served under subsection 11 (1) or subsection 20 (4), as the case may be.

Decision final

(5) The decision of the Minister is final. R.S.O. 1980, c. 378, s. 9, *amended*.

Suspension of  
licence

**22.**—(1) The Minister may suspend a licence for any period of time, not exceeding six months, for any contravention of this Act, the regulations, the site plan or the conditions of the licence, effective as soon as the notice mentioned in subsection (2) is served upon the licensee. R.S.O. 1980, c. 378, s. 8 (4), *amended*.

Notice of  
suspension

(2) Notice of suspension of a licence, including the reasons therefor, shall be served upon the licensee and, where applicable, upon the clerk of the regional municipality or county, as the case may be, and upon the clerk of the local municipality in which the site is located for their information.

Further  
particulars of  
notice

(3) The notice mentioned in subsection (2) shall inform the licensee of the period of the suspension, of the action the licensee must take or desist from taking before the suspension will be lifted, that the suspension will be lifted as soon as the

licensee has complied with the notice to the satisfaction of the Minister, and that, if the licensee does not comply with the notice within the period of the suspension, the Minister may revoke the licence.

(4) If a licensee whose licence has been suspended has not taken or desisted from taking the action as required within the period of the suspension, the Minister may revoke the licence, in which case subsections 20 (3), (5) and (6) apply. *New.* Revocation

### PART III

#### WAYSIDE PERMITS

**23.—**(1) Any public authority, or any person who has a contract with a public authority, that requires aggregate for a temporary project from a source in a part of Ontario designated under section 5 that is not under licence or permit may apply to the Minister, on a form provided by the Minister, for a wayside permit to operate a pit or quarry. Application for wayside permit

(2) Subsection 7 (1) does not apply to a person who has a wayside permit. Licence not required

(3) An application under subsection (1) shall not be considered unless, in the Minister's opinion, Limitation

(a) the aggregate is required,

(i) for a project of road construction or road maintenance, from outside the limits of the right of way of the highway, or

(ii) for an urgent project for which no alternative source of aggregate under licence or permit is readily available in the vicinity;

(b) the aggregate is necessary for the purposes of a contract or project; and

(c) adequate provision can be made as conditions of the permit to ensure a method of operation and rehabilitation so as to cause only a temporary inconvenience to the public.

(4) Every application for a wayside permit shall be accompanied by five copies of the site plan referred to in section 25. Requirements for permit

(5) The Minister may require an applicant for a wayside permit to furnish additional information in such form and Additional information

manner as is considered necessary, and, until the information is furnished, further consideration of the application may be refused.

Copies to  
municipalities

(6) The Minister, upon being satisfied that an application for a wayside permit and the documents accompanying it comply with this Act and the regulations, shall, where applicable, serve a copy of the application and accompanying documents upon the clerk of the regional municipality or county, as the case may be, and upon the clerk of the local municipality in which the site is located for their information. *New.*

Permit fees

**24.**—(1) Every applicant for a wayside permit shall, before the permit is issued, pay to the Treasurer a prescribed permit fee or a permit fee as calculated by multiplying the maximum number of tonnes that the permit authorizes by the prescribed rate per tonne of aggregate, whichever is the greater.

Refund of  
fee

(2) If a wayside permit expires or is revoked, the permittee is entitled to a refund of any remaining balance of the permit fee calculated by multiplying the number of tonnes that the permit authorized that were not removed from the site by the prescribed rate per tonne of aggregate applicable at the date the permit was issued.

Disbursal of  
permit fees

(3) Subject to subsection (2), the prescribed percentage of the total of the wayside permit fees collected shall be disbursed to such municipalities and in such amounts, manner and for such purposes as are prescribed.

Rehabili-  
tation of  
abandoned  
pits and  
quarries

(4) Subject to subsection (2), the prescribed percentage of the total of the wayside permit fees collected shall be set apart for the purposes mentioned in subsection 33 (2).

Non-  
refundable  
fee

(5) Despite subsection (2), the prescribed permit fee is not refundable. *New.*

Site plans for  
wayside  
permits

**25.**—(1) The site plan accompanying an application for a wayside permit must be in a style and manner acceptable to the Minister and must be signed by the applicant.

Idem

(2) The site plan accompanying an application for a wayside permit must show,

(a) a key map showing the location of the site;

(b) a general description of the site, including lot and concession lines, if any;



- (c) the public authority that is a party to the contract and the number of the project;
- (d) the location of the project;
- (e) the name and address of the owner of the site;
- (f) the shape, dimensions and hectarage of the site and the area to be excavated;
- (g) the existing and estimated final elevations of the site;
- (h) the use of the land and the location and use of the buildings and other structures within 150 metres of the site of the pit or within 500 metres of the site of the quarry;
- (i) the location, dimensions and use of the buildings and other structures existing or proposed to be erected on the site;
- (j) any significant natural and man made features;
- (k) every entrance to and exit from the site;
- (l) any existing and proposed drainage facilities on the site and points of discharge to surface waters;
- (m) subject to available information, the location of water wells on and within 300 metres of the site;
- (n) the maximum depth of excavation and whether it is intended to excavate below the water table;
- (o) the sequence and direction of operation of the pit or quarry;
- (p) the final rehabilitation plan;
- (q) the approximate scale; and
- (r) any other necessary information respecting the site.

(3) Every site plan submitted with an application under this section becomes the property of the Crown upon the permit applied for being issued. *New.*

Property of  
the Crown

**26.** The Minister in considering whether to issue or refuse a wayside permit shall have regard to,

Matters to be  
considered by  
Minister

- (a) any comments provided by the municipalities in which the site is located;
  - (b) the effect of the operation of the pit or quarry on the environment and nearby communities;
  - (c) the amount of aggregate estimated to be removed from the site;
  - (d) the estimated cost of the aggregate for the project as compared with that from any alternative source of supply;
  - (e) the proper management of the aggregate resources of the area;
  - (f) any previous wayside permits for the site and adjacent lands;
  - (g) the rehabilitation of the site and its compatibility with adjacent land;
  - (h) any possible effects on ground and surface water resources;
  - (i) any proposed aesthetic improvements to the landscape;
  - (j) the main haulage routes and proposed truck traffic to and from the site; and
  - (k) such other matters as are considered appropriate.
- R.S.O. 1980, c. 378, s. 12 (2), *amended*.

Issue of  
permits

**27.**—(1) The Minister may in his or her discretion issue a wayside permit whether or not the location of the site complies with all relevant zoning by-laws. R.S.O. 1980, c. 378, s. 12 (3), *amended*.

Limitation

(2) No wayside permit shall be issued if the issuance will result in more than one wayside permit for one site at any time.

Niagara  
Escarpment  
Planning  
Area  
R.S.O. 1980,  
c. 316

(3) Despite subsection (1), no wayside permit shall be issued for a site in the Niagara Escarpment Planning Area, as defined in the *Niagara Escarpment Planning and Development Act*, unless the location of the site complies with a development permit issued under that Act.

(4) Despite subsection (1), no wayside permit shall be issued for a site zoned and developed for residential use or zoned as an area having particular environmental sensitivity.

Exception

(5) The Lieutenant Governor in Council may make regulations governing and limiting the issuance of wayside permits.

Regulations  
limiting  
issuance*New.*

**28.** The Minister, on issuing a wayside permit, shall, where applicable, serve a copy of the wayside permit upon the clerk of the regional municipality or county, as the case may be, and upon the clerk of the local municipality in which the site is located for their information. *New.*

Copies to  
municipalities

**29.** Every wayside permittee shall operate the permittee's pit or quarry in accordance with this Act, the regulations, the site plan and the conditions of the permit. R.S.O. 1980, c. 378, s. 3, s. 4 (4), *part, amended.*

Duties of  
permittees

**30.—**(1) The Minister may in his or her discretion issue a wayside permit subject to such conditions as are considered necessary, including conditions that set out the maximum amount of aggregate that may be removed, the maximum area that may be excavated and, subject to section 31, the duration of the permit.

Permit  
subject to  
conditions

(2) The Minister may, at any time, add a condition to a wayside permit or rescind or vary any condition of a wayside permit.

Variation of  
conditions

(3) The Minister, after taking any action under subsection (2), shall serve notice thereof, including reasons therefor, upon the permittee and, where applicable, upon the clerk of the regional municipality or county, as the case may be, and upon the clerk of the local municipality in which the site is located for their information. *New.*

Notice to  
municipalities

**31.** A wayside permit expires on the completion of the project in respect of which it was issued or eighteen months after its date of issue, whichever occurs first. R.S.O. 1980, c. 378, s. 12 (4), *amended.*

Expiration of  
permit

**32.—**(1) The Minister may, at any time, suspend or revoke a wayside permit for any contravention of this Act, the regulations, the site plan or the conditions of the permit, effective as soon as the notice mentioned in subsection (2) is served upon the permittee. R.S.O. 1980, c. 378, s. 12 (5), *amended.*

Suspension  
or revocation



Notice to  
municipalities

(2) Notice of suspension or revocation of a permit, including reasons therefor, shall be served upon the permittee and, where applicable, upon the clerk of the regional municipality or county, as the case may be, and upon the clerk of the local municipality in which the site is located for their information.

Suspension—  
duration

(3) The Minister may suspend a wayside permit for any period of time not exceeding six months.

Suspension—  
further  
particulars of  
notice

(4) The notice mentioned in subsection (2) shall inform the permittee of the period of the suspension, of the action the permittee must take or desist from taking before the suspension will be lifted, that the suspension will be lifted as soon as the permittee has complied with the notice to the satisfaction of the Minister, and that, if the permittee does not comply with the notice within the period of the suspension, the Minister may revoke the permit.

Suspension—  
consequence  
of no  
remedial  
action

(5) If a permittee whose permit has been suspended has not taken or desisted from taking the action as required within the period of the suspension, the Minister may revoke the permit.  
*New.*

## PART IV

### ABANDONED PITS AND QUARRIES

Abandoned  
pits and  
quarries

**33.—**(1) The Minister may declare any pit or quarry for which a licence or wayside permit is not in force to be abandoned,

- (a) after receiving the consent of the person assessed for the land on which the pit or quarry is located; and
- (b) where applicable, after consultation with the regional municipality or county, as the case may be, and the local municipality in which the pit or quarry is located.

Disbursal for  
rehabilitation

(2) The Minister may disburse any portion of the fees set apart under subsections 14 (5) and 24 (4) for,

- (a) pre-program surveys or studies respecting the location, condition and rehabilitation of pits and quarries, for which a licence or wayside permit is not in force; and
- (b) the rehabilitation of abandoned pits and quarries.  
*New.*

## PART V

## AGGREGATE PERMITS

**34.—**(1) No person shall, except under the authority of and in accordance with an aggregate permit, operate a pit or quarry, Aggregate permits required

- (a) to excavate aggregate or topsoil that is on land the surface rights of which are the property of the Crown;
- (b) to excavate aggregate or topsoil that is the property of the Crown from land under water;
- (c) to excavate aggregate or topsoil that is the property of the Crown in a part of Ontario that is not designated under section 5; or
- (d) to excavate aggregate that is not the property of the Crown from land under water.

(2) The excavation of aggregate or topsoil resulting from non-aggregate mineral extraction from a placer deposit is considered to be the operation of a pit for the purpose of subsection (1). Idem

(3) The removal from the site of stockpiled aggregate or topsoil that is the property of the Crown and was excavated under an aggregate permit is considered to be the operation of a pit for the purpose of subsection (1). Idem

(4) Any person may apply to the Minister, on a form provided by the Minister, for an aggregate permit to operate a pit or quarry. Applications for aggregate permits

(5) A person who, except for this subsection, would apply for an aggregate permit shall apply for a licence if, When a licence is required instead of an aggregate permit

- (a) the site is in a part of Ontario designated under section 5;
- (b) the site is partly on land the surface rights of which are the property of the Crown and partly on land the surface rights of which are not the property of the Crown; and
- (c) the Minister directs the person in writing to apply for a licence. *New.*

Classes of  
aggregate  
permits

**35.—**(1) A commercial aggregate permit authorizes the excavation of aggregate and topsoil to be used for resale or commercial purposes or in conjunction with a commercial undertaking.

## Idem

(2) A public authority aggregate permit authorizes a public authority to excavate aggregate and topsoil for use by the public authority but not for resale or commercial purposes.

## Idem

(3) A public authority aggregate permit authorizes a person who has a contract with a public authority to excavate aggregate and topsoil for use by that person in a project of the public authority but not for resale or commercial purposes.

## Idem

(4) A personal aggregate permit authorizes an individual or a group of individuals to excavate aggregate and topsoil for use by the individual or group of individuals but not for resale or commercial purposes. *New.*

Information  
required

**36.—**(1) Every application for an aggregate permit must be accompanied by,

- (a) a site plan;
- (b) where applicable, information on any aquatic biological resources that may be affected by the operation of the pit or quarry and measures proposed to minimize impacts on and to restore aquatic biological habitat on the site; and
- (c) such additional information in such form and manner as the Minister considers necessary.

## Idem

(2) Until the information mentioned in subsection (1) is furnished to the Minister's satisfaction, further consideration of the application may be refused.

## Idem

(3) The Minister may waive the requirement for a site plan for an application for a personal aggregate permit.

## Site plans

(4) The site plan accompanying an application for an aggregate permit in respect of a pit or quarry that is entirely on dry land must show,

- (a) the location of the site;
- (b) existing conditions, including the shape, dimensions and area to be excavated, topography and land use on the site and within 150 metres of the site;



- (c) location, dimensions and use of any buildings or other structures existing or proposed to be erected on the site or existing within 150 metres of the site;
- (d) method and phasing of the operation;
- (e) estimated final elevations;
- (f) proposed progressive rehabilitation and final rehabilitation plans;
- (g) existing and proposed drainage and points of discharge to surface water;
- (h) location and size of existing and proposed stockpiles of overburden and soil and location and size of proposed aggregate stockpile areas;
- (i) location and type of fences;
- (j) all existing and proposed entrances to and exits from the site;
- (k) location of the excavation setback limits; and
- (l) the approximate scale.

(5) The site plan accompanying an application for an aggregate permit in respect of a pit or quarry located entirely on land covered by water must show, Idem

- (a) the location of the proposed operation and distance from the nearest shore and existing shoreline land uses that may be affected by the operation;
- (b) as nearly as possible the extent and nature of the aggregate deposit to be excavated;
- (c) the depth of the water covering the deposit; and
- (d) the proposed method of operation.

(6) The site plan accompanying an application for an aggregate permit in respect of a pit or quarry located partly on dry land and partly on land covered by water must show the information required in subsection (4) in respect of the dry land and the information required in subsection (5) in respect of the land covered by water. Idem

- Idem (7) Every site plan accompanying an application for an aggregate permit must be in a style and manner acceptable to the Minister and must be signed by the applicant.
- Waiver, etc., by Minister (8) The Minister may require additional information or may waive, vary or reduce the information required under subsection (4), (5) or (6).
- Plans property of the Crown (9) Every site plan submitted with an application under this section becomes the property of the Crown upon the aggregate permit applied for being issued. *New.*
- Issue of aggregate permits **37.**—(1) The Minister may issue an aggregate permit for a fixed period of not more than five years, subject to such conditions as are considered necessary.
- Idem (2) The Minister, on being satisfied that an applicant for an aggregate permit requires the use of aggregate in conjunction with the operation of a producing mine and that use will likely extend beyond five years, may issue the permit for a term exceeding five years.
- Permit fees (3) Every applicant for an aggregate permit shall, before the permit is issued, pay to the Treasurer a permit fee as prescribed.
- Limitation (4) No aggregate permit shall be issued for sand and gravel where the sand and gravel has been included in a mining claim as a placer deposit under the *Mining Act* until the non-aggregate mineral has been removed from the placer deposit.
- R.S.O. 1980, c. 268
- Conditions (5) An aggregate permit issued in respect of a pit or quarry located entirely or partly on land covered by water that is not the result of excavation below the water table shall contain such conditions as are considered necessary to minimize adverse impacts on or to restore aquatic biological habitat on the site.
- Changes in conditions (6) The Minister may at any time add a condition to an aggregate permit or rescind or vary any condition of such a permit.
- Amendment of site plans (7) Subject to sections 43 and 44, the Minister may at any time require an aggregate permittee to amend the site plan.
- Idem (8) An aggregate permittee may amend the site plan at any time with the approval in writing of the Minister. *New.*
- Public authority **38.** The Minister, if of the opinion that it is in the public interest, may authorize a public authority with a project that

requires aggregate or topsoil or any person who has a contract with a public authority for such a project to excavate and remove undisturbed aggregate or topsoil in the ground that is the property of the Crown from a site that is subject to an aggregate permit. *New.*

**39.**—(1) Any person who holds a commercial or public authority aggregate permit may, before the expiry of the permit, apply to the Minister for another aggregate permit for the same site to come into effect upon the expiry of the previous permit. *Renewal of permits*

(2) If another aggregate permit is issued for the same site, the new permit may cover a smaller area than the previous permit covered and contain different conditions than did the previous permit and the Minister may require an amendment to the site plan that accompanied the previous permit. *Change in area, conditions and site plan*

**40.** Every aggregate permittee shall carry on the operation in accordance with this Act, the regulations, the site plan, if any, and the conditions of the permit. *Duties of permittees*

**41.**—(1) Upon application therefor accompanied by the prescribed transfer fee, the Minister may consent to the transfer of a commercial aggregate permit. *Transfer of permits*

(2) A personal or public authority aggregate permit is not transferable. *Idem*

**42.** The Minister may, *Revocation, refusal to issue or transfer*

(a) refuse to issue an aggregate permit under section 37 or 39;

(b) refuse to consent to the transfer of an aggregate permit; or

(c) revoke an aggregate permit,

if,

(d) the Minister considers the issuance, transfer or continuation of the permit to be contrary to the public interest;

(e) in the opinion of the Minister, a substantial amount of aggregate or topsoil has not been removed from the site under the permit during the previous twelve months; or



- (f) the permittee has contravened any provision of this Act, the regulations, a site plan or any of the conditions to which the permit is subject. *New.*

Notice to  
applicant or  
permittee

**43.—(1)** If the Minister,

- (a) refuses to issue an aggregate permit to excavate aggregate or topsoil that is not the property of the Crown;
- (b) revokes an aggregate permit;
- (c) refuses to issue another aggregate permit;
- (d) proposes to issue another aggregate permit for a smaller area or with different conditions or site plan from the previous permit;
- (e) proposes to add, rescind or vary a condition of an aggregate permit;
- (f) attaches a condition to an aggregate permit issued under subsection 69 (12) that adds, rescinds or varies a condition of the permit or licence it replaces; or
- (g) proposes to require the amendment of a site plan,

the Minister shall serve forthwith notice thereof including the reasons therefor upon the applicant or permittee. R.S.O. 1980, c. 268, s. 119 (1), *part, amended.*

Time of  
taking effect

(2) Any action of the Minister under clause (1) (a), (b), (c) or (f) is effective as soon as the notice is served upon the applicant or permittee and, despite the fact that the applicant or permittee requires a hearing by the Commissioner, remains effective until the Minister takes action under subsection 44 (5).

No action  
until 30 days  
elapsed

(3) The Minister shall take no action proposed under clause (1) (d), (e), (f) or (g) until the thirty days referred to in subsection 44 (1) have elapsed.

Where no  
hearing

(4) The Minister may carry out a proposal under clause (1) (d), (e), (f) or (g) if the proposal is not referred to the Commissioner. *New.*

Entitlement  
to hearing

**44.—(1)** An applicant or aggregate permittee who is served with a notice mentioned in subsection 43 (1) is entitled to a hearing by the Commissioner if the applicant or permit-

tee, within thirty days after being served, serves the Minister with a notice that a hearing is required.

(2) The Minister, if served with a notice under subsection (1), shall, within thirty days after being served, refer the matter to the Commissioner for a hearing. Hearing

(3) The Commissioner shall hold a hearing on a matter referred under subsection (2) and, after the hearing, make a recommendation to the Minister. Recommendation by Commissioner

(4) The Commissioner shall specify the parties to the hearing. R.S.O. 1980, c. 268, s. 119 (2, 4), *amended*. Idem

(5) After considering the recommendation of the Commissioner, the Minister may take such action as the Minister considers appropriate and shall serve notice of the decision on the parties to the hearing. Decision by Minister

(6) The decision of the Minister is final. *New*. Decision final

**45.**—(1) The Minister may suspend an aggregate permit for any period of time not exceeding six months, Suspension of permit

(a) for any contravention of this Act, the regulations, the site plan or the conditions of the permit; or

(b) if, in the opinion of the Minister, the continuation of the operation under the permit will likely cause damage to property or is contrary to the public interest. R.S.O. 1980, c. 39, s. 4 (7), *part, amended*.

(2) The suspension shall be effective as soon as the required notice is served upon the permittee. *New*. Time of taking effect

(3) Notice of a suspension of an aggregate permit, including the reasons therefor, shall be served upon the permittee. R.S.O. 1980, c. 39, s. 4 (7), *part, amended*. Notice of suspension

(4) The notice of suspension shall inform the aggregate permittee of the period of the suspension, of the action the permittee must take or desist from taking before the suspension will be lifted, that the suspension will be lifted as soon as the permittee has complied with the notice to the satisfaction of the Minister, and that, if the permittee does not comply with the notice within the period of the suspension, the Minister may revoke the permit. Further particulars of notice

## Revocation

(5) If a permittee whose aggregate permit has been suspended has not taken or desisted from taking the action as required within the period of the suspension, the Minister may revoke the aggregate permit, in which case sections 43 and 44 apply. *New.*

## Royalties

**46.**—(1) The Minister shall determine the royalty per tonne that each aggregate permittee removing from the site aggregate or topsoil that is property of the Crown must pay, but in no case shall the royalty be less than the prescribed minimum royalty, and, in determining the royalty, the Minister shall have regard to the location, quantity, type and accessibility of the aggregate or topsoil and its intended use.

Returns and  
payment

(2) Every aggregate permittee shall make a return, when required by the Minister, showing the quantity of material removed from the site and, at the same time, enclose the required royalty payment payable to the Treasurer.

Security or  
deposit

(3) The Minister may require an aggregate permittee to give, in an amount determined by the Minister, security of the prescribed kind or a deposit for the payment of any royalty that is due or that may become due under subsection (1).

Recovery of  
royalties in  
default

(4) The amount of a default in the payment of a royalty under this section may be recovered by the Crown from any security given under subsection (3) or as a debt due to the Crown in any court of competent jurisdiction.

Exemption  
from royalty  
payment

(5) No royalty is payable by an aggregate permittee,

- (a) who is exempted from payment by the Minister; or
- (b) who belongs to a class of permittees exempted from payment by the regulations.

Licensee  
removing  
Crown  
aggregate or  
topsoil pays  
royalties

(6) Subsections (1) to (5) apply to a licensee who removes from the site aggregate or topsoil that is the property of the Crown as if the references to "aggregate permittee" were references to "licensee". *New.*

## PART VI

## REHABILITATION

Application  
of Part

**47.** This Part does not apply to a pit or quarry or part thereof that is covered by water that is not the result of excavation of aggregate below the water table. *New.*



**48.**—(1) Every licensee and every permittee shall perform progressive rehabilitation and final rehabilitation on the site in accordance with this Act, the regulations, the site plan and the conditions of the licence or permit to the satisfaction of the Minister.

Duty to rehabilitate site

(2) The Minister, upon being satisfied that a licensee, a permittee or former permittee has not performed adequate progressive rehabilitation on the site, may order the licensee, permittee or former permittee, as the case may be, to perform within a specified period of time such progressive rehabilitation as the Minister considers necessary and the licensee, permittee or former permittee shall comply with the order. *New.*

Minister's order requiring progressive rehabilitation

**49.** The Minister may waive or reduce the rehabilitation requirements, in respect of excavation of aggregate that is the property of the Crown, if, in the opinion of the Minister, to do so is not contrary to the public interest. *New.*

Waiver

**50.**—(1) Every licensee shall pay to the Treasurer security for the rehabilitation of the site at the prescribed time and in the prescribed amount and manner. R.S.O. 1980, c. 378, s. 11 (1), *amended.*

Rehabilitation security payments by licensees

(2) Any security for the rehabilitation of the site not paid by a licensee or former licensee is a debt due to the Crown and may be recovered by the Crown in any court of competent jurisdiction. *New.*

Recovery of amount not paid

**51.**—(1) Every person who applies for a permit must, before the permit is issued, pay to the Treasurer security for the rehabilitation of the site in the prescribed amount and manner.

Rehabilitation security payments by permittees

(2) Despite subsection (1), the Minister may, in the case of an aggregate permit, waive the payment, in advance, of the security in which event security shall be paid at the prescribed time.

Waiver

(3) The Minister may waive any security required under this section if the Minister does not consider it to be necessary or in the public interest.

Idem

(4) Any security for the rehabilitation of a site not paid by a permittee or former permittee is a debt due to the Crown and may be recovered by the Crown in any court of competent jurisdiction. *New.*

Recovery of amount not paid

Rehabilitation security accounts

**52.**—(1) Sums paid by a licensee or permittee under section 50 or 51 shall be held in an account in that person's name and shall be paid out in accordance with the regulations.

Interest payable

(2) Sums paid by a licensee or permittee under section 50 or 51 earn interest at the prescribed rate.

Interest deemed security

(3) Interest earned under subsection (2) is part of the rehabilitation security. *New.*

Partial refunds

**53.** Every licensee or permittee who submits proof, satisfactory to the Minister, of progressive rehabilitation on the site in accordance with this Act, the regulations, the site plan and the conditions of the licence or permit is entitled to a refund out of the rehabilitation security account in accordance with the regulations. *New.*

Refunds when rehabilitation fully performed

**54.** Every licensee, permittee, former licensee or former permittee who has submitted proof, satisfactory to the Minister, of final rehabilitation in accordance with this Act, the regulations, the site plan and the conditions of the licence or permit is entitled to a refund of the total sum to that person's credit in the rehabilitation security account. *New.*

Entry upon site for rehabilitation

**55.**—(1) A licensee, permittee, former licensee or former permittee who does not, without this subsection, have the right to enter upon a site not rehabilitated in accordance with this Act, the regulations, the site plan and the conditions of the licence or permit may enter upon the site and perform such rehabilitation as the Minister considers necessary.

Refunds

(2) Rehabilitation performed under subsection (1) is final rehabilitation for the purpose of section 54. *New.*

When rehabilitation not performed

**56.**—(1) The Minister or a person authorized in writing by the Minister may enter upon a site in respect of which a licence or permit was revoked or expired and not rehabilitated in accordance with this Act, the regulations, the site plan and the conditions of the licence or permit to the satisfaction of the Minister and may perform such rehabilitation as the Minister considers necessary.

Recovery of cost

(2) The cost of rehabilitation performed under subsection (1) is a debt due to the Crown by the former licensee or former permittee and shall be paid by the Treasurer out of the former licensee's or former permittee's rehabilitation security account. R.S.O. 1980, c. 378, s. 11, *amended.*

Disposition of surplus

(3) Any sum remaining to the credit of the former licensee or former permittee in that person's rehabilitation security



account after the cost of rehabilitation performed under subsection (1) has been paid out shall be paid by the Treasurer to that person.

(4) If a sum to the credit of a former licensee or former permittee in the rehabilitation security account is insufficient to defray the cost of rehabilitation, the amount of the deficiency is a debt due to the Crown by the former licensee or former permittee and is recoverable by the Crown in any court of competent jurisdiction. *New.*

Recovery of  
deficiency

PART VII

OFFENCES AND PENALTIES

**57.**—(1) Every person who operates a pit or quarry except under the authority of a licence or permit is guilty of an offence. R.S.O. 1980, c. 378, s. 4 (1), *amended.*

Operation of  
pit or quarry  
without  
licence or  
permit

(2) Every person who contravenes or permits the contravention of the site plan or a condition of the licence or permit is guilty of an offence.

Contra-  
vention of  
licence,  
permit or site  
plan

(3) Every person who contravenes any provision of this Act or the regulations is guilty of an offence. R.S.O. 1980, c. 378, s. 18 (1), *part, amended.*

Contra-  
vention of  
Act or  
regulations

(4) Every person who hinders or obstructs an inspector in the performance of the inspector's duties or furnishes the inspector with false information or refuses to furnish the inspector with information is guilty of an offence. R.S.O. 1980, c. 378, s. 13 (2), *amended.*

Obstruction  
of inspectors

**58.**—(1) Every person who commits an offence under section 57 is liable on conviction to a fine of not less than \$500 and not more than \$30,000 for each day on which the offence occurs or continues. R.S.O. 1980, c. 378, s. 18 (1), *amended.*

Penalty

(2) The maximum fine provided under subsection (1) may be increased by an amount equal to the amount of the monetary benefit acquired by or that accrued to the convicted person as a result of the commission of the offence. *New.*

Penalty  
increased by  
monetary  
benefit

**59.** In any prosecution under this Act, the court may, in addition to imposing a fine under section 58, make such order as the court considers proper to obtain compliance with this Act, the regulations, the site plan or any condition of a licence or permit. *New.*

Order for  
compliance



## PART VIII

## TERRITORY WITHOUT MUNICIPAL ORGANIZATION

Notice of application for licence in area without municipal organization

**60.**—(1) The Minister, upon being satisfied that an application for a licence for a pit or quarry located in territory without municipal organization and the documents accompanying it comply with this Act and the regulations, shall serve the applicant with notice that the applicant must cause notice of the application in the prescribed form to be published in two successive issues of a newspaper having general circulation in the locality in which the site is located and to be given in signs placed in the prescribed manner on the site.

Notice of publication

(2) The applicant shall notify the Minister when the publication of the notice has been completed. *New.*

Notice of objection

(3) Any person may serve the Minister, within forty-five days after the second publication under subsection (1) or within such further period as the Minister may allow, a notice of objection to the issue of the licence applied for and the reasons therefor.

Idem

(4) Upon receipt of a notice under subsection (3), the Minister shall provide the applicant with a copy thereof.

Notice requiring hearing

(5) Any person serving a notice under subsection (3) may, in addition, serve the Minister within the period provided under subsection (3) a notice that the person requires a hearing of the matter before the Board.

Reference to Board for a hearing

(6) Upon receipt of a notice under subsection (5) that, in the opinion of the Minister, discloses an interest in the matter that is sufficiently substantial to warrant a hearing and is not frivolous or vexatious, the Minister shall refer the application and the objections to the Board for a hearing. R.S.O. 1980, c. 378, s. 5 (1, 3), *amended*.

Idem

(7) The Minister may, on his or her own motion, refer an application and objections, if any, to the Board for a hearing. R.S.O. 1980, c. 378, s. 5 (4), *amended*.

What Board may consider at one hearing 1983, c. 1

(8) The Board may consider an application referred to it under section 34 of the *Planning Act, 1983*, and an application referred to it under this section at the same hearing. *New.*

Publication of notice

**61.**—(1) The Minister shall, in addition to any notice that is required to be served, publish notice of a proposed action under subsection 13 (2), subsection 16 (1) or (2) or subsection 68 (1) or (2) in respect of a site located in territory without

municipal organization in two successive issues of a newspaper having general circulation in the locality in which the site is located.

(2) The Minister may dispense with publication of the notice under subsection (1) if the Minister does not consider the proposal to be a significant matter. Exception

(3) Any person may provide the Minister with comments at any time up to thirty days after the second publication under subsection (1) and the Minister may take no action until the thirty days have elapsed. Comments

(4) Any notice required to be given by the Minister to a municipality for the purpose of information only may, in respect of a site located in territory without municipal organization, be given to such persons and in such manner as the Minister, in his or her discretion, directs. *New.* Notice for information only

## PART IX

### MISCELLANEOUS

**62.**—(1) Every licensee or permittee shall keep, for a period of seven years, detailed records of the operation for which the licence or permit has been issued, including copies of all documents relating to sales and shipments. Record keeping

(2) Every licensee or permittee shall make available for inspection by any person authorized for the purpose of this Act all the records required to be kept under subsection (1). R.S.O. 1980, c. 268, s. 121, *amended.* Inspection of records

**63.**—(1) If it appears to the Minister that any person is not complying or does not intend to comply with this Act or the regulations or a site plan or a condition of a licence or permit, despite the imposition of any penalty for non-compliance, the Minister may apply to a judge of the High Court for an order directing the person to comply. Restraining orders

(2) Upon an application under subsection (1), the judge may make such order as he or she considers proper. Idem

(3) An appeal lies to the Divisional Court from an order made under subsection (2). R.S.O. 1980, c. 378, s. 15, *amended.* Appeal

**64.**—(1) Any notice required to be served under this Act or the regulations is sufficiently served if delivered personally or sent by registered mail addressed to the person upon whom Service of notices

service is to be made at the last address for service appearing on the records of the Ministry.

Idem

(2) Service made by registered mail shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, and for cause beyond that person's control, receive the notice until a later date. R.S.O. 1980, c. 378, s. 16, *amended*.

Joint effect

R.S.O. 1980,  
c. 321

**65.** This Act and the regulations are in addition to and not in substitution for Regulation 694 of Revised Regulations of Ontario, 1980, made under the *Occupational Health and Safety Act* or any provisions substituted therefor at any time. *New*.

Act overrides  
municipal by-  
laws, etc.

**66.**—(1) In the event that this Act and the regulations and a municipal by-law, official plan or development agreement treat the same subject-matter in different ways, this Act and the regulations prevail and the by-law, official plan or development agreement is inoperative to the extent that it differs from this Act and the regulations. R.S.O. 1980, c. 378, s. 17 (2), *amended*.

Retroactive  
effect

(2) Subsection (1) applies whether the by-law, official plan or development agreement comes into force before or after this Act.

Power to  
pass by-laws  
restricted  
R.S.O. 1980,  
c. 302

(3) Every municipal by-law passed under the *Municipal Act*, except a by-law passed under paragraph 137 of section 210, that purports to prohibit the carrying on or operating of a pit or quarry or wayside pit or quarry is inoperative to the extent that it differs from this Act and the regulations.

Idem

(4) Subsection (3) applies to by-laws passed before or after this Act comes into force. *New*.

Regulations

**67.** The Lieutenant Governor in Council may make regulations,

- (a) respecting the management of the aggregate resources of Ontario;
- (b) prescribing material as aggregate;
- (c) prescribing duties of inspectors;
- (d) prescribing or providing for the calculation of fees and providing for the payment thereof;



- (e) prescribing a rate per tonne of aggregate for the purpose of calculating fees;
- (f) prescribing the percentage of the total of the annual licence fees and wayside permit fees collected that shall be disbursed to municipalities, prescribing the amounts, manner and purposes of such disbursements and prescribing the municipalities to which such disbursements shall be made;
- (g) requiring and providing for the records and information that must be kept and returns that must be filed by municipalities to which fees are disbursed;
- (h) prescribing the percentage of the total of the annual licence fees and wayside permit fees collected that may be set apart and disbursed for the purposes mentioned in subsection 33 (2);
- (i) respecting the control and operation of pits and quarries;
- (j) prescribing the minimum royalty for aggregate that is the property of the Crown and providing for the payment thereof;
- (k) exempting a class or classes of aggregate permittees from the payment of royalties;
- (l) prescribing kinds of security for the purposes of subsection 46 (3);
- (m) governing the rehabilitation of pits and quarries;
- (n) respecting the form, terms and conditions and time of payment of rehabilitation security, prescribing a rate per tonne of aggregate for the purpose of calculating rehabilitation security, prescribing maximum and minimum amounts per hectare of rehabilitation security for aggregate operations, prescribing the rate of interest payable thereon and providing for refunds from rehabilitation security accounts and royalty accounts;
- (o) requiring and providing for the records and information that must be kept and returns that must be made by licensees and permittees;
- (p) prescribing forms for the purposes of this Act and providing for their use;

- (q) prescribing the size and content of signs required under subsections 11 (2) and 60 (1) and governing the placement thereof;
- (r) respecting any matter considered necessary or advisable to carry out the intent and purpose of this Act. R.S.O. 1980, c. 378, s. 19 (1), *amended*.

Relief from compliance

**68.**—(1) The Minister, if of the opinion that it is not contrary to the public interest, may, in writing, relieve any licensee or permittee from compliance in whole or in part with the regulations.

Idem

(2) The relief granted under subsection (1) is subject to such conditions as are set out in the instrument giving it. R.S.O. 1980, c. 378, s. 19 (2), *amended*.

Idem

(3) The Minister may at any time rescind or vary any relief granted under subsection (1) upon written notice thereof to the licensee or permittee.

Notice to municipality

(4) The Minister, if the matter appears to warrant it, shall serve notice of a proposed relief under subsection (1), including reasons therefor, upon the clerk of the local municipality in which the site is located and, where applicable, upon the clerk of the regional municipality or county, as the case may be, for their information and comment.

Delay in relief

(5) The Minister may not grant relief until the Minister is served with comments by the municipalities or thirty days after service of the notice by the Minister, whichever occurs first. *New*.

Pits and quarries under licence or permit under R.S.O. 1980, c. 378

**69.**—(1) Despite section 77, the *Pits and Quarries Control Act* and the regulations thereunder continue to apply to,

- (a) every pit or quarry for which an operator is licensed under that Act for six months after this Act comes into force except where the licence expires under subsection (2) or (3); and
- (b) every pit or quarry for which a wayside permit exists under that Act for the remaining term of the permit.

Application for a licence under this Act R.S.O. 1980, c. 378

(2) During the first three months after this Act comes into force an application for replacing a licence for the identical site under this Act accompanied by the prescribed fee may be made by a licensee under the *Pits and Quarries Control Act* in respect of that licensee's pit or quarry and, if an application is

not so made, the licence under the *Pits and Quarries Control Act* expires at the end of the three-month period. R.S.O. 1980,  
c. 378

(3) Within the six-month period mentioned in subsection (1), if the applicant has paid fees and deposited rehabilitation security as required under the *Pits and Quarries Control Act*, the Minister shall issue a licence under this Act in respect of every application under subsection (2) even if the requirements of section 8 have not been met and whether or not all relevant zoning by-laws are complied with. Licence to be  
issued

(4) As soon as a licence is issued under this Act for a pit or quarry to which this section applies, the licence under the *Pits and Quarries Control Act* expires and that Act and the regulations thereunder cease to apply, but the site plan under that Act continues in effect until superseded by a site plan under this Act. Idem  
  
R.S.O. 1980,  
c. 378

(5) Ten copies of the site plan referred to in section 8 or such lesser number as the Minister indicates must be served upon the Minister within six months after the licensee has been served with a demand therefor by the Minister or within four years after this Act comes into force, whichever occurs first. When new  
site plan  
requirements  
to be met

(6) Clauses 7 (3) (a), (b) and (c) and sections 9, 10, 11, 12 and 60 do not apply to applications made under subsection (2) of this section. ss. 7 (3)  
(a-c), 9-12,  
60, do not  
apply

(7) Despite section 77,

(a) the *Mining Act* and the regulations thereunder continue to apply to every pit and quarry for which a permit exists under that Act; and Permits and  
licences  
under  
R.S.O. 1980,  
cc. 268, 39

(b) the *Beach Protection Act* and the regulations thereunder continue to apply to every pit or quarry for which an operator is licensed under that Act,

for the remaining term of the permit or licence, as the case may be, or for twelve months after this Act comes into force, whichever occurs first.

(8) Every permit or licence issued under the *Pits and Quarries Control Act*, the *Mining Act* or the *Beach Protection Act* subsisting on the day that this Act comes into force shall be deemed to be a permit or licence, as the case may be, issued under this Act. Transition re  
R.S.O. 1980,  
cc. 378, 268,  
39

(9) Every licence issued under the *Pits and Quarries Con-* Licences  
ruled invalid  
by court  
R.S.O. 1980,  
c. 378



*trol Act* by the Minister to reflect a change in operator and not revoked before the day this Act comes into force shall be deemed to be subsisting for the purpose of subsection (8) despite the decision of any court.

Expiry of  
licences

(10) Every permit or licence referred to in subsection (7) that, on its terms, does not expire within twelve months after this Act comes into force expires with the twelfth month after this Act comes into force.

Application  
where permit  
or licence  
under  
R.S.O. 1980,  
cc. 268, 39  
to expire

(11) If a quarry permit under the *Mining Act* or a licence under the *Beach Protection Act* expires because of the application of subsection (10), the permittee or licensee may apply for a replacing aggregate permit, for the identical site, under this Act by an application accompanied by the prescribed fee submitted not later than ten months after this Act comes into force.

Permit to be  
issued

(12) The Minister shall issue an aggregate permit in respect of every application under subsection (11) if the applicant has paid all fees, royalties and security required by this Act under which the permit or licence was issued.

Conditions

(13) Subject to sections 20 and 43, the Minister may attach such conditions as the Minister considers advisable to any licence issued under subsection (3) or any permit issued under subsection (12).

Site plan

(14) The site plan accompanying an application under subsection (12) may be a duplicate of the site plan that accompanied the original application unless the Minister directs otherwise.

Rehabili-  
tation  
security  
R.S.O. 1980,  
cc. 378, 268,  
39

(15) All fees, royalties, security and interest on deposit or payable under the *Pits and Quarries Control Act*, the *Mining Act* or the *Beach Protection Act* in respect of a licence or aggregate permit replaced under this section shall be deemed to be on deposit or payable as provided under this Act.

Credit for  
rehabilitation

(16) Any rehabilitation that has been carried out in respect of a pit or quarry under a permit or licence under an Act referred to in this section and for which the permittee or licensee has not received credit under that Act before this Act comes into force shall be deemed to be rehabilitation performed for the purpose of this Act. *New.*

Non-  
application of  
ss. 10,  
11 (2-9), 60

**70.**—(1) Section 10, subsections 11 (2) to (9) and section 60 do not apply to an application for a licence in respect of a site for which a licence under the *Pits and Quarries Control Act* expired under subsection 69 (2) if the application is made

after the three-month period mentioned in subsection 69 (2) but within the two-year period after this Act comes into force.

(2) The Minister may waive the requirement for a report under section 9 for any application under subsection (1). Waiver of s. 9

(3) The Minister may issue a licence in respect of an application under subsection (1) whether or not all relevant zoning by-laws are complied with. *New.* Non-compliance with zoning by-laws

**71.**—(1) This Act and the regulations apply to every established pit and quarry in a part of Ontario designated under subsection 5 (2). Act applies to pits and quarries in newly designated areas

(2) The Minister may, in his or her absolute discretion, determine, in cases where doubt exists, whether a pit or quarry is an established pit or quarry. Determination by Minister in cases of doubt

(3) Despite subsection 57 (1), a person with an established pit or quarry in a part of Ontario designated under subsection 5 (2) may continue to operate the pit or quarry without a licence or permit until the six-month period next following the date of the designation expires. Right to operate for limited period without licence or permit

(4) Despite subsection 57 (1), a person who applies for a licence during the six-month period next following the day of the designation under subsection 5 (2), and, Right to operate for limited period without licence

- (a) who is not required by the Minister to refer a matter to the Divisional Court under subsection 13 (6) may operate an established pit or quarry without a licence subsequent to such six-month period until the licence is either issued or refused or the twelve-month period next following the day of the designation expires, whichever occurs first; or
- (b) who is required by the Minister to refer a matter to the Divisional Court under subsection 13 (6) may operate an established pit or quarry until the licence is either issued or refused.

(5) The Minister, if satisfied that the application under subsection (4) is in respect of an established pit or quarry and that the location of the land on which the pit or quarry is situate complies with all relevant zoning by-laws, shall issue a licence under this Act to the applicant even if the requirements of section 8 have not been met. Licence to be issued



When new  
site plan  
requirements  
to be met

(6) Ten copies of the site plan referred to in section 8 or such lesser number as the Minister indicates must be served upon the Minister within six months after the licensee has been served with a demand therefor by the Minister or within four years after this Act comes into force, whichever occurs first.

ss. 7 (3)  
(a-c), 9,  
11 (2-9), 12,  
60 do not  
apply

(7) Despite subsection (1), clauses 7 (3) (a), (b) and (c), section 9, subsections 11 (2) to (9), sections 12 and 60 do not apply to applications made under subsection (4).

Non-  
application of  
ss. 11 (2-9), 12,  
60 and  
waiver of  
s. 9

(8) Despite subsection (1), subsections 11 (2) to (9) and section 60 do not apply to an application for an established pit or quarry made during the two-year period next following the day of the designation.

Waiver

(9) The Minister may waive the requirement for a report under section 9 for any application under subsection (8).

Person  
deemed  
licensee from  
date of  
designation

(10) For the purposes of this Act and the regulations, every person who has been issued a licence for an established pit or quarry in a part of Ontario that is designated under subsection 5 (2) shall be deemed to be a licensee from the date of the designation. *New.*

Application  
under  
R.S.O. 1980,  
cc. 378, 268,  
39 deemed  
application  
under this  
Act

**72.—**(1) If an application for a licence or permit to operate a pit or quarry has been made under and complies with the *Pits and Quarries Control Act*, the *Mining Act* or the *Beach Protection Act* or a predecessor thereof but no licence or permit has been issued or refused by the Minister under one of those Acts before this Act comes into force, the application shall be deemed to be an application made under this Act.

Applicant  
must comply  
with this Act

(2) The applicant under an application referred to in subsection (1) shall comply under this Act with the requirements of,

- (a) section 7 within six months after this Act comes into force;
- (b) subsections 23 (3), (4) and (5) and subsection 24 (1) within six months after this Act comes into force; or
- (c) section 36 within ten months after this Act comes into force.

Minister may  
refuse to  
consider  
application

(3) If, in the opinion of the Minister, the applicant fails to comply with the requirements of subsection (2), the Minister may refuse further consideration of the application.



(4) If an applicant complies with the requirements of subsection (2), a hearing pending before the Board or Commissioner or in respect of which the Board or Commissioner has not reported to the Minister respecting a matter referred to the Board or Commissioner under the *Pits and Quarries Control Act*, the *Mining Act* or the *Beach Protection Act*, as the case may be, shall be deemed to be a hearing for the purposes of this Act. *New.*

Hearing  
before the  
Board

R.S.O. 1980,  
cc. 378, 268,  
39

**73.**—(1) Subject to subsection (2), despite the fact that a licence or permit has been issued, no person shall operate a quarry nearer to the natural edge of the Niagara escarpment than 200 metres measured horizontally.

Quarrying  
near Niagara  
escarpment

(2) No person holding a licence for a quarry under the *Pits and Quarries Control Act* when this Act comes into force and who is issued a licence for the quarry under this Act shall operate the quarry nearer to the natural edge of the Niagara escarpment than ninety metres measured horizontally.

Idem

(3) For the purposes of subsection (1) or (2), the natural edge of the Niagara escarpment is the natural edge determined by the Minister. *New.*

Determi-  
nation of  
natural edge

**74.** For the purposes of section 27 and subsection 69 (3), if the location of a pit or quarry for which a licence or wayside permit has been issued contravenes a zoning by-law, the licence or permit prevails and the by-law does not apply to the site. *New.*

Licence or  
permit  
prevails

**75.** For the purposes of this Act, aggregate that is not removed from the site as aggregate but is used on the site,

Aggregate  
deemed  
removed

- (a) in the manufacture of cement, concrete blocks, concrete pipes, bricks, asphalt, concrete mix or any other product; or
- (b) in the construction or maintenance of a structure or road, other than a road constructed primarily for the operation of a pit or quarry,

shall be deemed to have been removed from the site. *New.*

**76.**—(1) Every quarry permit issued under Part VII of the *Mining Act* and every licence issued under the *Beach Protection Act* that is subsisting when this Act comes into force continues in force until its expiry date or for a further twelve months, whichever occurs first.

Permits and  
licences  
under  
R.S.O. 1980,  
cc. 268, 39

## Idem

(2) For the purpose of section 34, the holder of a permit or licence referred to in subsection (1) shall be deemed to be an aggregate permittee. *New.*

## Repeals

**77.** The *Pits and Quarries Control Act*, being chapter 378 of the Revised Statutes of Ontario, 1980, the *Pits and Quarries Control Amendment Act, 1988*, being chapter 55, the *Beach Protection Act*, being chapter 39 of the Revised Statutes of Ontario, 1980, and Part VII of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, are repealed.

Commence-  
ment

**78.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

## Short title

**79.** The short title of this Act is the *Aggregate Resources Act, 1989*.

## CHAPTER 24

### **An Act to amend certain Acts as they relate to Police and Sheriffs**

*Assented to June 20th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) The *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:**

**57a.—(1)** A board or council responsible for the policing of a municipality has the following responsibilities, with respect to premises where court proceedings are conducted:

Court security in municipalities with police forces

1. Ensuring the security of judges and of persons taking part in or attending proceedings.
2. During the hours when judges and members of the public are normally present, ensuring the security of the premises.
3. Ensuring the secure custody of persons in custody who are on or about the premises including persons taken into custody at proceedings.
4. Determining appropriate levels of security for the purposes of paragraphs 1, 2 and 3.

(2) The Ontario Provincial Police Force has the responsibilities set out in paragraphs 1, 2, 3 and 4 of subsection (1) in those parts of Ontario in which it has responsibility for policing.

Idem, other parts of Ontario

(3) The responsibilities created by this section replace any responsibility for ensuring court security that existed at common law.

Common law replaced

(2) No action or other proceeding for damages, specific performance or any other relief shall be instituted against Her

Contracts unenforceable



Majesty the Queen in right of Ontario or the Attorney General or their officers, employees or agents arising from the negotiation, performance or termination of any agreement relating to court security entered into before this Act comes into force.

**2.—(1)** Section 2 of the *Sheriffs Act*, being chapter 470 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 11, section 212, is repealed and the following substituted therefor:

Civil orders  
directed to  
sheriffs

**2.—(1)** Unless an Act provides otherwise, orders of a court arising out of a civil proceeding and enforceable in Ontario shall be directed to the sheriff for enforcement.

Police to  
assist sheriff

(2) A sheriff who believes that the execution of an order may give rise to a breach of the peace may require a police officer to accompany the sheriff and assist in the execution of the order.

(2) Section 16 of the said Act is repealed.

(3) Section 17 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 212, is repealed.

**3.** Section 37 of the *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended,

- (a) by striking out "the sheriff or a police force, or both" in the fourth last line of subsection (2) and inserting in lieu thereof "a police force";
- (b) by striking out "sheriff or" in the first line of subsection (4); and
- (c) by striking out "a sheriff or" in the second line of subsection (5).

**4.—(1)** Section 94 of the *Courts of Justice Act, 1984*, being chapter 11, is amended by inserting after "reporters" in the first line "court attendants".

(2) Subsection 108 (3) of the said Act is amended by striking out "and 146 (prohibition against photography at court hearings)" in the second and third lines and inserting in lieu thereof "146 (prohibition against photography at court hearings) and 152a (arrest and committal warrants enforceable by police)".

(3) The said Act is amended by adding thereto the following section:

**152a.** Warrants of committal, warrants for arrest and any other orders requiring persons to be apprehended or taken into custody shall be directed to police officers for enforcement. Orders enforceable by police

**5.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

**6.** The short title of this Act is the *Police and Sheriffs Statute Law Amendment Act, 1989*. Short title





## CHAPTER 25

### **An Act to amend the Provincial Offences Act and the Highway Traffic Act**

*Assented to June 20th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 91g of the *Provincial Offences Act*, being chapter 400 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 80, section 1, is amended by adding thereto the following subsection:**

(3) Subsection (1) does not prohibit the following:

Exceptions

1. The disclosure of information by the young person concerned.
2. The disclosure of information by the young person's parent or lawyer, for the purpose of protecting the young person's interests.
3. The disclosure of information by a police officer, for the purpose of investigating an offence which the young person is suspected of having committed.
4. The disclosure of information to an insurer, to enable the insurer to investigate a claim arising out of an offence committed or alleged to have been committed by the young person.
5. The disclosure of information in the course of the administration of justice, but not for the purpose of making the information known in the community.
6. The disclosure of information by a person or member of a class of persons prescribed by the regulations, for a purpose prescribed by the regulations.

**2. Subsection 194a (2) of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, as**

enacted by the Statutes of Ontario, 1985, chapter 13, section 17, is repealed.

Commence-  
ment

**3.** This Act comes into force on the day it receives Royal Assent.

Short title

**4.** The short title of this Act is the *Provincial Offences and Highway Traffic Amendment Act, 1989*.

## CHAPTER 26

### **An Act to confirm a certain Agreement between the Governments of Canada and Ontario**

*Assented to June 20th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The 1986 Indian Lands Agreement, reproduced as Schedule A, is hereby confirmed. Agreement confirmed
2. This Act comes into force on the day it receives Royal Assent. Commencement
3. The short title of this Act is the *Indian Lands Agreement Confirmation Act, 1989*. Short title

### SCHEDULE A

Memorandum of Agreement made this 5th day of August, 1986.

Between:

THE GOVERNMENT OF CANADA as represented by the Minister of Indian and Northern Affairs for Canada (hereinafter referred to as Canada)

—and—

THE GOVERNMENT OF THE PROVINCE OF ONTARIO as represented by the Minister of Natural Resources for the Province of Ontario (hereinafter referred to as Ontario)

This agreement witnesseth that the parties hereto have agreed as follows:

#### 1. Definitions

- (a) "Band", "Council of the Band", "Surrender", "Custom" and "Indian" have the same meaning as those words in the *Indian Act*, R.S.C. 1970, c. I-6, as the same may be amended from time to time;
- (b) "land" includes any interest in land;
- (c) "minerals" includes gold, silver and all other metals, precious and base, and coal, natural gas, oil, salt, sand and gravel;



- (d) "1924 Agreement" means the agreement between Canada and Ontario dated March 24, 1924, and the statutes confirming it, i.e., Statutes of Canada, 14-15 George V, chapter 48, and Statutes of Ontario, 14 George V, chapter 15.

2. Ontario, Canada, and any band or group of bands may enter into specific agreements. Any one or more Bands may enter into one or more specific agreements.

3. A specific agreement may be entered into with respect to any matter or question relating to lands or natural resources, including any of the following:

- (a) any matter dealt with in the 1924 Agreement;
- (b) administration and control;
- (c) the exercise, allocation or transfer or disposal of any interests in lands or natural resources;
- (d) minerals, mineral rights and royalties, and the disposition or taxation of any of them;
- (e) hydro powers;
- (f) disposition of lands or natural resources;
- (g) consequences of extinction or enfranchisement of a band;
- (h) disposition of any monies;
- (i) the non-applicability of any provision or provisions of the 1924 Agreement;
- (j) any other provision required for the implementation of a specific agreement.

4. The provisions of any specific agreement shall have effect upon confirmation. In the event of any inconsistency with the 1924 Agreement, the specific agreement shall supercede.

5. Neither this Agreement nor any specific agreement shall affect the validity of any treaty or surrender.

6. Canada and Ontario may enter into an agreement or agreements for the confirmation of patents issued or other dispositions of land by the other with respect to land, but no such agreement or confirmation shall in any way affect the rights of any band or the recourse which any band would, absent such agreement, have against any person or land, including the Crown and Crown lands.

7. If Canada has collected money or collects money on behalf of any band or bands pursuant to sales or other dispositions of land or interests in land, Ontario acknowledges that Canada may continue to administer that money for the use and benefit of the band or bands, but in no case shall money collected by Canada expressly on behalf of Ontario be deemed to be money collected by Canada on behalf of a band or bands.

8. This Agreement shall come into force when it is confirmed by the Parliament of Canada and the Legislature of Ontario and such confirmations come into force.

9. A specific agreement shall come into force when it is confirmed by Orders-in-Council of both Canada and Ontario and is confirmed by the band.

10. Confirmation by a band of a specific agreement shall take place:

- (a) by a Referendum conducted pursuant to regulations made by the Governor General-in-Council under the authority of the Act of Parliament implementing this Agreement; or
- (b) pursuant to the band's custom or constitution, provided that the Council of the band gives written notification to the Minister of Indian Affairs and Northern Development and to the Minister of Natural Resources for Ontario that confirmation took place pursuant to the band's custom or constitution, as the case may be.

11. Where a specific agreement affects or deals with lands, lands affected shall be described in a schedule to the specific agreement.

12. No specific agreement entered into by any band shall be binding upon any other band or have any effect on any other band unless it has been confirmed by that other band.

13. A specific agreement may be amended by the parties or their successors in the same manner as it was originally made.

IN WITNESS WHEREOF the said parties hereto have set their hands and seals.

SIGNED, SEALED AND DELIVERED  
in the presence of

*P. Francoeur*  
as to the execution of

Minister of Indian and  
Northern Affairs

*Bill McKnight*  
Minister of Indian and  
Northern Affairs for  
Canada

*Adair Ireland-Smith*  
as to the execution of

Minister of Natural  
Resources

*Vincent G. Kerrio*  
Minister of Natural  
Resources for the  
Province of Ontario





## CHAPTER 27

### **An Act to amend the Amusement Devices Act, 1986**

*Assented to June 20th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 6 of the *Amusement Devices Act, 1986*, being chapter 6, is amended by adding thereto the following subsection:**

(4) No person shall behave in or on an amusement device or do any work on an amusement device in such manner as to, Dangerous  
behaviour

(a) impair the safe operation of the device; or

(b) endanger any person.

**2. Section 10 of the said Act is amended by adding thereto the following subsection:**

(2a) An inspector designated under subsection (1), Idem

(a) may require that a part of an amusement device be sealed to prevent readjustment thereof; and

(b) if there is reasonable grounds to believe that an amusement device can not or will not be operated safely, may require the licensee of the device to conduct, at the licensee's expense, such tests as the inspector may specify.

**3.—(1) Subsection 12 (1) of the said Act is repealed and the following substituted therefor:**

(1) An inspector who has reason to believe that an amusement device, Order not  
to use

(a) is not being or can not be operated safely;

- (b) will be operated unsafely; or
- (c) is being operated other than in accordance with a permit,

shall order that the device not be operated or used and shall affix a seal thereto.

**(2) Subsection 12 (2) of the said Act is amended by adding at the end thereof “or that the device will be operated in accordance with a permit, as the case may be”.**

**4. The said Act is amended by adding thereto the following section:**

Where  
contravention

**12a.**—(1) An inspector who has reason to believe that there is a contravention of this Act or the regulations that does not present an immediate hazard may serve the contravener or a person who has the authority to correct the contravention with a written order directing that the deficiency be corrected within the time specified in the order.

Idem

(2) Any person who receives an order under subsection (1) and complies with the order is not guilty of an offence in respect of the contravention that was the subject-matter of the order.

**5. Subsection 13 (1) of the said Act is repealed and the following substituted therefor:**

Appeal

(1) Any person affected by an order of an inspector may appeal at any time to the Director.

**6. Subsections 16 (1) and (2) of the said Act are repealed and the following substituted therefor:**

Notification  
of accident,  
etc.

(1) If an accident or an incident occurs in connection with an amusement device that results in the death of or serious injury to any person, the licensee responsible for the device shall immediately notify the Director of the accident or incident.

Idem

(2) Every licensee responsible for an amusement device that is involved in an accident or in any incident indicating that the device is potentially dangerous shall notify the Director, by telephone, within twenty-four hours after the accident or incident and shall submit to the Director, within seven days after the accident or incident, a written report setting out the particulars of the accident or incident.

**7.—(1)** Subsection 17 (1) of the said Act is amended by inserting after “regulations” in the second line “or who fails to comply with an order of an inspector”.

**(2)** Section 17 of the said Act is amended by adding thereto the following subsection:

**(3)** No proceedings under this Act may be commenced after one year after the date when the subject-matter occurred or is alleged to have occurred. Time limit

**8.—(1)** Subsection 18 (1) of the said Act is amended by adding thereto the following clauses:

(ma) prescribing the circumstances under which expenses or special fees, or both, are to be paid and prescribing the special fees and designating the persons by whom such expenses or fees are to be paid;

(mb) classifying inspections and prescribing the fees to be paid for inspections or witnessing tests by inspectors and prescribing by whom the fees shall be paid.

**(2)** Subsection 18 (4) of the said Act is repealed and the following substituted therefor:

**(4)** The Director may allow a variance from any regulation to accommodate technological problems or advances if, in the opinion of the Director, the variance would not detrimentally affect the safe use of the amusement device involved. Variance by  
Director

**9.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**10.** The short title of this Act is the *Amusement Devices Amendment Act, 1989*. Short title





## CHAPTER 28

### **An Act to amend the Elevating Devices Act**

*Assented to June 20th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 30 of the *Elevating Devices Act*, being chapter 135 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:**

(3) No proceedings under this Act may be commenced after one year after the date when the subject-matter occurred or is alleged to have occurred. Time limit

**2. This Act comes into force on the day it receives Royal Assent.** Commence-  
ment

**3. The short title of this Act is the *Elevating Devices Amendment Act, 1989*.** Short title





## CHAPTER 29

### An Act to amend the Energy Act

*Assented to June 20th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** Subsection 28 (1) of the *Energy Act*, being chapter 139 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

- (na) designating persons or classes of persons empowered to administer any code or standard adopted under subsection (2) and delegating to the designated persons or classes the authority to administer any code or standard adopted.

**(2)** Section 28 of the said Act is amended by adding thereto the following subsections:

(4) The Director may allow a variance from any code adopted under the regulations or any provision in the regulations where, in the Director's opinion, the variance would not detrimentally affect the safety of the appliance, pipeline or work.

Variance by  
Director

(5) The Director may authorize the use of a new code or standard or changes to established codes or standards necessary to accommodate technological advances for a limited time and subject to any conditions specified.

Use of new  
codes, etc.

**2.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**3.** The short title of this Act is the *Energy Amendment Act, 1989*.

Short title



## CHAPTER 30

### An Act to amend the Environmental Protection Act

*Assented to June 20th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Environmental Protection Act*, being chapter 141 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

#### PART V-A

##### OZONE DEPLETING SUBSTANCES

**47i.** In this Part,

Definitions

“designated” means designated by the regulations;

“ozone depleting substance” means a chlorofluorocarbon, a halon or any other substance that has the potential to destroy ozone in the stratosphere.

**47j.** Sections 47k and 47-l apply only in respect of the following ozone depleting substances: Application

1. CFC-11, also known as fluorotrichloromethane.
2. CFC-12, also known as dichlorodifluoromethane.
3. CFC-113, also known as 1,1,2-trichloro-1,2,2-trifluoroethane.
4. CFC-114, also known as 1,2-dichloro-1,1,2,2-tetrafluoroethane.
5. CFC-115, also known as 1-chloro-1,1,2,2,2-pentafluoroethane.
6. Halon-1211, also known as bromochlorodifluoromethane.



7. Halon-1301, also known as bromotrifluoromethane.
8. Halon-2402, also known as dibromotetrafluoroethane.
9. Such other ozone depleting substances as may be designated.

## Prohibition

**47k.** No person shall, after the 1st day of July, 1989, make, use, transfer, display, transport, store or dispose of,

- (a) any thing, other than a prescription drug, containing an ozone depleting substance that acts as a propellant; or
- (b) any designated thing or any thing of a designated class if that thing contains an ozone depleting substance.

## Prohibition

**47-1.** No person shall, after the 1st day of July, 1989, make, use, transfer, display, transport, store or dispose of,

- (a) any packaging, wrapping or container that is made in a manner that uses an ozone depleting substance; or
- (b) any designated thing or any thing of a designated class if that thing is made in a manner that uses an ozone depleting substance.

**2. Section 136 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 23, 1986, chapter 68, section 11 and 1988, chapter 54, section 45, is further amended by adding thereto the following subsection:**

Regulations  
relating to  
Part V-A

(4a) The Lieutenant Governor in Council may make regulations relating to Part V-A,

- (a) designating any matter referred to in the Part as designated;
- (b) classifying ozone depleting substances, things containing an ozone depleting substance and things made in a manner that uses an ozone depleting substance, providing for exemptions in respect of any such class from any requirement of the Part or of the regulations made under this subsection, and prescribing conditions for any such exemption;

- (c) respecting the making, use, transfer, display, transportation, storage, recycling or disposal of things containing an ozone depleting substance and of things made in a manner that uses an ozone depleting substance;
- (d) prescribing that designated industries devote a designated percentage of their budget to undertake research and development to develop substitutes for ozone depleting substances.

**3. This Act comes into force on the day it receives Royal Assent.** Commence-  
ment

**4. The short title of this Act is the *Environmental Protection Amendment Act, 1989*.** Short title





## CHAPTER 31

### **An Act to revise the Rental Housing Protection Act, 1986**

*Assented to June 29th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

#### **1. In this Act,**

#### **Definitions**

“co-operative” means a rental property that is,

- (a) ultimately owned or leased or otherwise held, directly or indirectly, by more than one person where any such person, or a person claiming under such person, has the right to present or future exclusive possession of a unit in the rental property and, without restricting the generality of the foregoing, includes a rental property that is owned or leased or otherwise held in trust or that is owned or leased or otherwise held by a partnership or limited partnership as partnership property, where any trustee, beneficiary, partner, general partner or limited partner, or other person claiming under such trustee, beneficiary, partner, general partner or limited partner, has the right to present or future exclusive possession of a unit in the rental property, or
- (b) ultimately owned or leased or otherwise held, directly or indirectly, by a corporation having more than one shareholder or member, where any such shareholder or member, or a person claiming under such shareholder or member, by reason of the ownership of shares in or being a member of the corporation, has the right to present or future exclusive possession of a unit in the rental property,

but does not include a non-profit co-operative housing corporation as defined in the *Residential Rent Regulation Act*, 1986, c. 63 1986;

“co-operative interest holder” means a person who has an interest in a co-operative or is a shareholder or member of a corporation that has an interest in a co-operative;

“Minister” means the Minister of Housing;

“Ministry” means the Ministry of Housing;

“municipality” means a city, town, village, improvement district or township;

“person” includes an individual, sole proprietorship, partnership, limited partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his or her capacity as trustee, executor, administrator or other legal representative;

“prescribed” means prescribed by the regulations;

“regulations” means regulations made under this Act;

1983, c. 1

“related group of buildings” means buildings that are under the same ownership and on the same parcel of land as defined in section 45 of the *Planning Act, 1983*;

“rental property” means a building or related group of buildings containing one or more rental units, but does not include a condominium;

“rental unit” means premises used as rented residential premises and includes premises that have been used as rented residential premises and are vacant;

“rented residential premises” includes a room in a boarding house or lodging house;

R.S.O. 1980,  
c. 232

“spouse” means a spouse as defined in clause 1 (ca) of the *Landlord and Tenant Act*.

#### APPLICATION OF ACT

Application  
of Act

**2.—(1)** This Act applies to rental property situate in any municipality in Ontario, except a municipality that is exempted by the regulations, despite any other Act and despite any agreement to the contrary.

Idem

(2) Despite subsection (1), this Act applies to rental property situate in any municipality in Ontario in respect of a pro-

posed conversion of rental property to a co-operative or condominium.

**3.—**(1) This Act, or such part or parts thereof as are specified in the regulations, does not apply to rental units or rental properties or categories thereof that are exempted by the regulations for such general or special purposes as are specified therein. Exemptions

(2) A rental property is exempt from this Act if the number of residential units in the property, including the number of rental units, is four or fewer. Idem

(3) Subsection (2) does not apply in respect of a proposed conversion of rental property to a condominium. Exception

(4) This Act does not apply to premises that have been used as rented residential premises and are vacant if, Exemption

- (a) immediately before becoming vacant, the premises were used as something other than rented residential premises; and
- (b) the premises were converted to the use referred to in clause (a) without contravening this Act or a predecessor thereof.

#### PROHIBITIONS

**4.—**(1) No rental property, or part thereof, shall be, Prohibition

- (a) demolished;
- (b) converted to use as a condominium, co-operative, hotel, motel, tourist home, inn or apartment hotel, or to any use for a purpose other than rental property; or
- (c) renovated or repaired if,
  - (i) a tenant is in possession of a rental unit and vacant possession of the rental unit would be required, or
  - (ii) the repair or renovation is to a vacant rental unit and is so extensive that, were the rental unit occupied, vacant possession of the unit would be required,



by any person unless the council of the municipality in which the property is situate approves of the demolition, conversion, renovation or repair.

Where  
s. 4 (1) (b)  
does not  
apply

(2) Clause (1) (b) does not apply so as to require the approval of the council of the municipality if the conversion of rental property, or part thereof, is to use for the purposes of occupation by,

R.S.O. 1980,  
c. 232

(a) a person referred to in section 105 of the *Landlord and Tenant Act*, except that approval is required where the occupation is pursuant to a notice of termination given on the grounds set out in that section if,

(i) another notice of termination has been given on the grounds set out in the said section 105 in respect of any rental unit in the rental property and the tenant thereof has vacated the premises pursuant to that other notice, unless three years have passed since the date the other notice was specified to be effective, or

(ii) within any sixty-day period, notices of termination are given on the grounds set out in the said section 105 in respect of any two or more rental units in the rental property, and the occupation of the rental units is to be by a person or persons referred to in the said section 105;

(b) a person who, by reason of being a co-operative interest holder has the right to present or future exclusive possession of a unit in the co-operative, if the co-operative did not result from a conversion from rental property or, where any such conversion took place, the conversion was not in contravention of this Act or a predecessor thereof; or

(c) the spouse or a child or parent of the person mentioned in clause (b) or a child or parent of the spouse of that person.

Where  
s. 4 (1)  
(a) and (b)  
do not apply

(3) Clauses (1) (a) and (b) do not apply so as to require the approval of the council of the municipality where the demolition or conversion affects only those portions of a rental property in which no residential units are situate and in relation to which no vacant possession of a rental unit is required.

(4) For the purposes of this section, a building or part of a building shall be deemed to be an apartment hotel if it contains transient living accommodation which has self-contained bathroom and kitchen facilities and in respect of which accommodation the prescribed criteria are met.

Apartment  
hotel

5.—(1) No consent shall be given under subsection 52 (1) of the *Planning Act, 1983* in respect of a rental property unless the council of the municipality in which the property is situate approves of the consent.

Approval  
required for  
severance  
1983, c. 1

(2) Nothing in subsection (1) prevents a consent being given that is conditional on the approval of the council of the municipality being obtained.

Conditional  
consent

6. If an approval is required under this Act, no permit, licence, consent, permission or approval under the following provisions shall be granted in respect of the rental property to which the approval under this Act relates until the certificate has been issued under subsection 13 (6):

Restriction  
on issuing of  
licences,  
permits, etc.

1. A permit to construct or demolish a building under section 5 of the *Building Code Act*. R.S.O. 1980,  
c. 51
2. A consent under section 33 or 34 of the *Ontario Heritage Act*. R.S.O. 1980,  
c. 337
3. A permit under section 43 of the *Ontario Heritage Act*.
4. A minor variance under section 44 of the *Planning Act, 1983*.
5. A demolition permit under section 33 of the *Planning Act, 1983*.
6. Except as otherwise prescribed, a business licence under any provision of the *Municipal Act*. R.S.O. 1980,  
c. 302
7. A licence under section 4 of the *Tourism Act*. R.S.O. 1980,  
c. 507
8. An approval under section 3 of the *Hotel Fire Safety Act*. R.S.O. 1980,  
c. 207
9. Such other provisions as are prescribed under which a permit, licence, consent, permission or approval is granted.

## CO-OPERATIVES

Prohibition,  
co-operatives

**7.—(1)** No person shall sell, enter into an agreement to sell, lease or enter into an agreement to lease an interest in a co-operative or in a corporation owning or leasing any interest in a co-operative or enter into any other arrangement or transaction that has the effect of transferring an interest in a co-operative or in a corporation owning or leasing any interest in a co-operative except where the co-operative did not result from a conversion from rental property, or, where any such conversion took place, the conversion was not in contravention of this Act or a predecessor thereof.

## Exception

(2) Subsection (1) does not apply to a lease or an agreement to lease an interest in a co-operative, or in a corporation owning or leasing any interest in a co-operative, for a term, including any entitlement to a renewal or renewals, of less than twenty-one years.

## Exemption

(3) This section does not apply to the transfer of an interest in a co-operative or in a corporation owning or leasing any interest in a co-operative that is exempted by the regulations.

Consequences  
of  
contravention

(4) A conveyance, lease, agreement, arrangement or transaction entered into in contravention of subsection (1) is voidable at the instance of the person who acquired the interest in the co-operative or in the corporation owning or leasing any interest in the co-operative and any amount paid under the conveyance, lease, agreement, arrangement or transaction is recoverable by the person who so acquired the interest.

## Interpretation

(5) For the purposes of subsections 4 (1) and (2) and this section, the conversion from rental property to the co-operative occurs when the first lease or sale of an interest in rental property or of a share in a corporation owning or leasing any interest in rental property takes place that carries with it the right to occupy a specific unit in the rental property or when a rental property is transferred or leased to a corporation of the type mentioned in clause (b) of the definition of “co-operative” in section 1, and, for the purposes of this subsection, where a lease or sale of a share or interest takes place, the lease or sale shall be deemed to have occurred on the day the agreement to enter into the lease or the agreement for sale was entered into.

## Idem

(6) For the purposes of subsection (5), “lease or sale” means any arrangement or transaction that has the effect of transferring an interest in a co-operative or in a corporation owning or leasing any interest in a co-operative.



## CONDOMINIUMS

**8.—**(1) The council of a municipality, when considering an application for conversion to a condominium under clause 4 (1) (b), shall also, in the place of the Minister of Municipal Affairs, exercise the powers conferred on the Minister of Municipal Affairs under section 50 of the *Condominium Act* respecting the approval or exemption of descriptions.

Power of council

R.S.O. 1980, c. 84

(2) The consideration by council of an application for condominium conversion under clause 4 (1) (b) is independent of the powers exercised by council under section 50 of the *Condominium Act*, but no final approval shall be given under section 50 unless approval has been obtained under this Act.

Two separate matters

## TERMINATION OF TENANCIES

**9.—**(1) No notice of termination shall be given on the grounds set out in section 107 of the *Landlord and Tenant Act* unless the approval of the council of the municipality under subsection 4 (1) has been obtained, where such approval is required, and a copy of the certificate issued under subsection 13 (6) is given at the time the notice is given.

Certificate required for valid notice  
R.S.O. 1980, c. 232

(2) A notice of termination given in contravention of subsection (1) is void.

Notice void

(3) Despite section 113 of the *Landlord and Tenant Act*, no order for a writ of possession shall be issued in respect of the grounds set out in section 107 of that Act, even if the notice of termination was given or application made for a writ of possession before the coming into force of this Act, unless the approval of the council of the municipality under subsection 4 (1) of this Act or a predecessor thereof, as the case may be, has been obtained where such approval is required.

Restriction re: writ of possession

**10.—**(1) No notice of termination shall be given on the grounds set out in section 105 of the *Landlord and Tenant Act* unless the approval of the council of the municipality under subsection 4 (1) has been obtained, where such approval is required, and a copy of the certificate issued under subsection 13 (6) is given at the time the notice is given.

Certificate or exemption required for valid notice

(2) A notice of termination given in contravention of subsection (1) is void.

Notice void

(3) Despite section 113 of the *Landlord and Tenant Act*, no order for a writ of possession shall be issued in respect of the grounds set out in section 105 of that Act, even if the notice of termination was given or application made before the com-

Restriction re: writ of possession  
R.S.O. 1980, c. 232

ing into force of this Act, unless the approval of the council of the municipality under subsection 4 (1) has been obtained, where such approval is required.

#### APPLICATIONS

Application  
for approval

**11.—(1)** An owner of rental property may apply in writing for an approval under this Act to the clerk of the municipality and the application shall contain such information as may be prescribed.

Notice to  
tenants

(2) Notice in the prescribed form of the application shall be given in the prescribed manner by the applicant to each tenant of a rental unit in the rental property within five days of the application being made.

Notice by  
municipality

(3) The council of the municipality shall give a copy of the application and a request for written comments, together with such additional material as may be prescribed, to such persons and in such manner as is prescribed.

Inspection  
and report

(4) The council of the municipality may require an applicant to cause an architect, professional engineer or other qualified person to make a physical inspection of the rental property and to make a report on matters determined by the municipality to be of concern or it may require that the inspection be made and report prepared by its chief building official.

Entry for  
inspection

(5) For the purposes of an inspection under subsection (4), a person authorized to inspect a rental unit has the right to enter the rental unit at reasonable times upon giving at least twenty-four hours written notice to the tenant specifying the time of entry and a tenant shall permit the entry of such person during that time.

Copy of  
report made  
available

(6) A copy of the report referred to in subsection (4) shall be made available by the municipality for inspection by the public.

Power of  
council

(7) The council may approve the application with or without such conditions as in its opinion are reasonable or reject the application but council shall not approve the application unless such criteria as are prescribed are met.

Information  
and public  
meeting

(8) Before considering an application under this section, the council shall ensure that adequate information is made available to the public, and for this purpose shall hold at least one public meeting, notice of which shall be given in such



form and content and in such manner and to such persons as are prescribed.

(9) The meeting mentioned in subsection (8) shall be held not sooner than fifteen days after the requirements for the giving of notice of the meeting have been complied with and any person who attends the meeting shall be afforded an opportunity to make representation in respect of the proposed application.

Time for meeting, etc.

(10) Written notice of the decision of council, including the reasons for the decision and the time limit within which the decision may be appealed to the Ontario Municipal Board, shall be sent within five days of the making thereof to the applicant, to every person who in writing requested to be given notice of the decision and to every other prescribed person.

Notice of decision

**12.—**(1) Every municipality may enter into agreements imposed as a condition to an approval under this Act and any such agreement may be registered against the land to which it applies.

Agreements

(2) The municipality is entitled to enforce the provisions of the agreement against the owner and, subject to the *Registry Act* and the *Land Titles Act*, any subsequent owner of the land.

Enforcement  
R.S.O. 1980,  
cc. 445, 230

(3) Where the terms of an agreement registered under subsection (1) have been complied with or where the time during which the agreement is to remain in effect has expired, the municipality shall cause to be registered in the proper land registry office a certificate signed by the clerk of the municipality stating that the terms of the agreement have been complied with or that the time the agreement is to remain in effect has expired, as the case may be, and thereupon the land against which the agreement is registered is free and clear of the terms of the agreement.

Certificate agreement complied with, etc.

#### APPEALS

**13.—**(1) Where the council refuses or neglects to make a decision on the application made in accordance with this Act within thirty days of the receipt of the application by the clerk of the municipality, the applicant may appeal to the Ontario Municipal Board by filing with the clerk of the municipality a notice of appeal.

Appeal to O.M.B.

(2) Any person who is not satisfied with the decision of council may, not later than twenty days after the date of the

Appeal of decision to O.M.B.



decision, appeal to the Ontario Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the decision and the reasons for the objection.

Record

(3) The clerk of the municipality, upon receipt of a notice of appeal under subsection (1) or (2), shall compile a record and forward the notice of appeal and the record to the secretary of the Ontario Municipal Board and shall provide such information or material as the Board may require in respect of the appeal.

Hearing

(4) The Ontario Municipal Board shall hold a hearing and has the same authority as does the council under subsection 11 (7) but, if all appeals have been withdrawn before the hearing, the decision of the council is final and the secretary of the Board shall notify the clerk of the municipality who shall notify the applicant.

No petition  
from O.M.B.  
R.S.O. 1980,  
c. 347

(5) Despite section 94 of the *Ontario Municipal Board Act*, there is no right to file a petition under that section in respect of an order or decision of the Board made in respect of a matter appealed to the Board under this Act.

Certificate  
that approval  
given

(6) When an approval has been given under this Act by the municipality or the Ontario Municipal Board, the clerk of the municipality shall issue a certificate in the prescribed form to the applicant stating that the approval has been given.

When  
certificate of  
approval to  
be issued

(7) No certificate of approval shall be issued until the time for an appeal has passed or until the appeal has been disposed of, whichever is later and, until the certificate is issued, no person shall commence the activity mentioned in subsection 4 (1) or carry out the transaction to which the consent mentioned in subsection 5 (1) relates, as the case may be.

Conditions to  
be fulfilled

(8) Where a condition has been imposed, the certificate shall not be given until the council is satisfied that the condition has been fulfilled.

Certificate  
conclusive

(9) The certificate issued under subsection (6) is conclusive evidence that the approval was given and that the provisions of this Act leading to the approval have been complied with.

Idem

(10) After the certificate has been issued, no action may be maintained to question the validity of the approval, but nothing in this subsection prevents an application for judicial review or an appeal to the Divisional Court as may be provided by law or any further appeal therefrom.

## INSPECTIONS

**14.—**(1) The Minister or a municipality may designate as inspectors such employees of the Ministry or of the municipality respectively as are considered necessary by the Minister or the municipality for the purposes of ensuring that this Act and the regulations are complied with. Inspectors

(2) An inspector may, on giving twenty-four hours prior written notice to the owner of the rental property of the intention to do so, at reasonable times and on producing proper identification, Inspection

- (a) enter and inspect any rental property except any room or place therein actually used as a dwelling; and
- (b) upon giving a receipt therefor, remove from the rental property any document or thing found during the course of the inspection, and that may be relevant thereto, for the purpose of making copies or extracts and shall promptly thereafter return them to the rental property from which they were removed.

(3) No person shall hinder, obstruct or interfere with an inspector in the exercise of the right of entry and inspection and removal of documents or things conferred under subsection (2). Obstruction

(4) Where a justice of the peace is satisfied by evidence under oath, Warrant to enter and inspect rental property

- (a) that the entry and inspection of a rental property is authorized under subsection (2) and is reasonably necessary in the enforcement of this Act; and
- (b) that an inspector has been denied access to the rental property or that there are reasonable grounds to believe that access would be refused,

the justice of the peace may issue a warrant in the prescribed form authorizing an inspector named in the warrant to enter and inspect the rental property, by the use of force if necessary, together with such police officers as may be called upon to assist the inspector, and upon giving a receipt therefor, to remove from the rental property any document or thing found during the course of the inspection, and that may be relevant thereto, for the purpose of making copies or extracts and shall

promptly thereafter return them to the rental property from which they were removed.

When to be  
executed and  
expiry

(5) A warrant issued under subsection (4) shall be executed at reasonable times as specified in the warrant and the warrant shall state the date upon which it expires which date shall not be later than fifteen days after the warrant is issued.

Entry into  
common  
areas

(6) On the invitation to do so by the occupier of a rental unit, an inspector may enter and inspect any common areas of the rental property in which the rental unit is located and to which the occupier has a right of access.

Entry into  
dwelling  
place

(7) Except under the authority of a warrant issued under subsection (8), an inspector shall not enter any room or place actually used as a dwelling for the purposes of inspecting that dwelling without requesting and obtaining the consent of the occupier, first having informed the occupier that the right of entry may be refused and entry made only under the authority of a warrant.

Warrant to  
enter and  
search

(8) Where a justice of the peace is satisfied by evidence under oath,

- (a) that there is reasonable and probable ground for believing that an offence under this Act has been committed; and
- (b) that there is reasonable and probable ground for believing that the entry into and search of any building, receptacle or place will afford evidence as to the commission of the offence,

the justice of the peace may issue a warrant in the prescribed form authorizing an inspector named in the warrant to enter and search the building, receptacle or place, by the use of force if necessary, together with such police officers as may be called upon to assist the inspector, and upon giving a receipt therefor, to remove from the building, receptacle or place any document or thing that may afford evidence of the offence for the purpose of making copies or extracts and shall promptly return them to the building, receptacle or place from which they were removed.

When to be  
executed and  
expiry

(9) A warrant issued under subsection (8) shall be executed at reasonable times as specified in the warrant and the warrant shall state the date upon which it expires which date shall not be later than fifteen days after the warrant is issued.



(10) Copies of or extracts from documents and things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts. Admissibility of copies

#### GENERAL

**15.—**(1) The council of a municipality may by by-law establish fees for the processing of an application made under this Act. Fees

(2) The fees shall not exceed the anticipated cost to the municipality of processing the application and of having its chief building official make an inspection of the rental property. Idem

**16.** The Minister may make grants to municipalities to assist them in training their employees in the administration of this Act. Grants to municipalities

**17.—**(1) Where, on an application made to the District Court or the Supreme Court by a tenant, former tenant, municipal corporation or the Minister, the court determines that an owner or tenant of rental property or person acting on behalf of the owner or tenant has converted, has attempted to convert or is in the process of converting the property or part thereof to a condominium, co-operative, hotel, motel, tourist home, inn or apartment hotel, or to any use for a purpose other than rental property without the approval of council under subsection 4 (1), where such approval was required, the court may make one or more of the following orders: Restraining, etc., order

1. An order restraining the owner or tenant or person acting on behalf of the owner or tenant from converting or continuing to convert the property.
2. An order requiring the owner or tenant or any subsequent owner or tenant to return the property to the use to which it was being put immediately prior to the conversion or attempted conversion.
3. An order restoring the tenancy and putting the tenant of a rental unit back into possession.

(2) An order made under subsection (1) may require the owner or tenant or any subsequent owner or tenant or person acting on behalf of any one of them, as the case requires, to Idem

take such steps as the court considers necessary to give effect to the order.

Joint  
application

(3) A joint application may be brought by persons who are eligible to bring an application under subsection (1).

Remedies are  
additional

(4) The remedies provided by this section are in addition to any other remedies existing by law.

Regulations

**18.** The Lieutenant Governor in Council may make regulations,

- (a) exempting any municipality or part thereof from this Act;
- (b) exempting rental units or rental properties, or categories thereof, from this Act or any part or parts thereof for such general or specific purposes as are specified;
- (c) prescribing, for the purposes of subsection 11 (7), the criteria upon which approval may be granted or refused by a municipality under subsection 4 (1) or 5 (1);
- (d) prescribing, for the purposes of subsection 4 (4), criteria to be met by transient living accommodation;
- (e) exempting the transfer of an interest in a co-operative or in a corporation owning or leasing any interest in a co-operative or any category of co-operatives from section 7;
- (f) prescribing, for the purposes of paragraph 6 of section 6, provisions of the *Municipal Act* respecting a business licence to which that paragraph does not apply;
- (g) prescribing, for the purposes of section 6, additional provisions respecting a permit, licence, consent, permission or approval;
- (h) prescribing the information to be contained in an application under subsection 11 (1);
- (i) prescribing the form of notice to be given and the manner in which notice is to be given under subsection 11 (2);

R.S.O. 1980,  
c. 302

- (j) prescribing, for the purposes of subsection 11 (3), the persons to whom and the manner in which the copy of the application is to be given by the council and prescribing additional material to be given with the copy of the application;
- (k) prescribing, for the purposes of subsection 11 (8), the form and content of the notice and the manner in which and the persons to whom the notice is to be given by the council;
- (l) prescribing, for the purposes of subsection 11 (10), other persons to whom notice of the decision of council shall be given;
- (m) prescribing the form of the certificate of approval under subsection 13 (6);
- (n) prescribing, for the purposes of subsection 14 (4), the form of a warrant to enter and inspect, and for the purposes of subsection 14 (8), the form of a warrant to enter and search;
- (o) prescribing anything that by this Act is to be or may be prescribed.

#### OFFENCES

**19.** Every person who contravenes subsection 4 (1), 7 (1), 9 (1), 10 (1) or 14 (3), and every director or officer of a corporation who authorized, permitted or acquiesced in the contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, but no person is guilty of an offence if the person did not know, and in the exercise of due diligence could not have known, of the contravention. Offence

**20.—(1)** No owner of rental property or person acting on the owner's behalf shall interfere with the reasonable enjoyment of a rental unit in the rental property by the tenant thereof with the intent of discouraging the participation of the tenant in the application process described in section 11 or the appeal process described in section 13 or with the intent of otherwise facilitating the obtaining of the approval of the council of a municipality on an application made under this Act. Harassment  
of tenant

**(2)** Every person who contravenes subsection (1) and every director or officer of a corporation who authorized, permitted Offence



or acquiesced in the contravention is guilty of an offence and on conviction is liable to a fine of not less than \$1,000 and not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, but no director or officer is guilty of an offence if he or she did not know, and in the exercise of due diligence could not have known, of the contravention.

Address of  
rental unit

(3) An information commencing a proceeding under this section shall contain the complete municipal address of the rental unit to which the information relates.

Penalty

(4) In addition to levying a fine or imposing a term of imprisonment under subsection (2) and notwithstanding any other remedy existing by law, the court may order that the person convicted pay to the aggrieved tenant an amount not exceeding \$2,000 as a penalty for the unlawful interference.

Civil  
remedies not  
precluded

(5) No disposition made under subsection (4) precludes the tenant from pursuing any civil remedy existing by law.

Certificate of  
conviction to  
clerk

(6) A certificate or other proof of a conviction under subsection (2) shall be forwarded by the court to the clerk of the municipality in which the rental unit is situate.

Copy to  
contain  
address

(7) The certificate or other proof of conviction forwarded to the clerk under subsection (6) shall contain the address of the rental unit as set out in the information.

Restriction  
on approval

(8) Where notice of a conviction under subsection (2) is received by the clerk of the municipality, the clerk shall inform the council and no approval shall then be given under subsection 4 (1) or 5 (1) in respect of a rental unit in the same rental property unless,

(a) three years have passed since the date of conviction;  
or

(b) an appeal is brought and the conviction is quashed.

Limitation of  
action

**21.** Proceedings shall not be commenced, in respect of an offence under this Act, after two years from the date the offence was, or is alleged to have been, committed.

#### MISCELLANEOUS

Immunity for  
acts done in  
good faith

**22.—(1)** No action or other proceeding for compensation or damages shall be instituted against any officer or employee of the Ministry for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or the

regulations or for any neglect or default in the performance or exercise in good faith of such duty or power.

(2) No action or other proceeding for compensation or damages shall be instituted against any officer or employee of a municipality for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or the regulations or for any neglect or default in the performance or exercise in good faith of such duty or power. Idem

(3) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject and subsection (2) does not relieve a municipal corporation of any liability in respect of a tort committed by a municipal officer or employee to which it would otherwise be subject, and the Crown or the municipal corporation, as the case may be, is liable for any such tort as though subsections (1) and (2) had not been enacted. Liability of Crown and municipality  
R.S.O. 1980, c. 393

**23.**—(1) If all permits required under the *Building Code Act* and the *Planning Act, 1983* for a demolition, renovation or repair have been obtained before the 10th day of July, 1986, or, in respect of vacant rental property, have been obtained before the coming into force of section 24, the approval of council under subsection 4 (1) is not required. Transition  
R.S.O. 1980, c. 51  
1983, c. 1

(2) If a certificate has been given under subsection 52 (21) of the *Planning Act, 1983* before the 10th day of July, 1986, or, in respect of vacant rental property, has been given before the coming into force of section 24, the approval of council under subsection 5 (1) is not required. Idem

(3) If a draft approval or a commitment for an exemption from an approval has been granted under section 50 of the *Condominium Act* or the Ontario Municipal Board has issued a decision approving an application for conversion to a condominium before the 10th day of July, 1986, or, in respect of vacant rental property, has been granted or issued before the coming into force of section 24, the approval of the council of a municipality under subsection 4 (1) is not required. Condominium conversion  
R.S.O. 1980, c. 84

(4) Any proceeding that has been commenced under the *Rental Housing Protection Act, 1986* before the day this section comes into force shall be continued and finally disposed of under that Act, except that no petition may be filed with the Clerk of the Executive Council under subsection 7 (17) of Proceedings continued under  
1986, c. 26



R.S.O. 1980,  
c. 347

that Act or under section 94 of the *Ontario Municipal Board Act*.

Right to  
petition  
continued  
1986, c. 26

(5) Despite subsection (4), where a petition has been filed under subsection 7 (17) of the *Rental Housing Protection Act, 1986* before the coming into force of this section, subsections 7 (17) and (18) of the *Rental Housing Protection Act, 1986* continue in force for the purpose of finally disposing of the petition.

**24.—(1) The definition of “rental unit” in section 1 of the *Rental Housing Protection Act, 1986*, being chapter 26, is repealed and the following substituted therefor:**

“rental unit” means premises used as rented residential premises and includes premises that have been used as rented residential premises and are vacant.

**(2) The said section 1 is amended by adding thereto the following definition:**

“rented residential premises” includes a room in a boarding house or lodging house.

**(3) Section 3 of the said Act is amended by adding thereto the following subsection:**

Idem

(2) This Act does not apply to premises that have been used as rented residential premises and are vacant if,

(a) immediately before becoming vacant, the premises were used as something other than rented residential premises; and

(b) the premises were converted to the use referred to in clause (a) without contravening this Act.

Transition  
1986, c. 26

**25.—(1) The *Rental Housing Protection Act, 1986*, as amended by section 24 of this Act, applies to rental residential properties even though they are vacant on the day section 24 comes into force.**

Idem

R.S.O. 1980,  
c. 51  
1983, c. 1

(2) Despite subsection (1), if all permits required under the *Building Code Act* and the *Planning Act, 1983* for a demolition, renovation or repair have been obtained before the coming into force of section 24 in respect of a vacant rental residential property, the approval of the council of a municipality under subsection 4 (1) of the *Rental Housing Protection Act, 1986* is not required.



(3) Despite subsection (1), if a certificate has been given under subsection 52 (21) of the *Planning Act, 1983* before the coming into force of section 24 in respect of a vacant rental residential property, the approval of the council of a municipality under subsection 4 (1) of the *Rental Housing Protection Act, 1986* is not required.

Idem  
1983, c. 1  
  
1986, c. 26

(4) Despite subsection (1), the approval of the council of a municipality under subsection 4 (1) of the *Rental Housing Protection Act, 1986* is not required in respect of a vacant rental residential property if, before the coming into force of section 24,

Idem,  
condominium  
conversion

- (a) a draft approval or a commitment for an exemption from an approval has been granted under section 50 of the *Condominium Act*; or
- (b) the Ontario Municipal Board has issued a decision approving an application for conversion to a condominium.

R.S.O. 1980,  
c. 84

**26.** Subsection 12 (2) of the *Rental Housing Protection Act, 1986*, being chapter 26, as amended by the Statutes of Ontario, 1988, chapter 22, section 1, is repealed.

**27.—**(1) This Act, except sections 24 and 25, comes into force on the 30th day of June, 1989.

Commence-  
ment

(2) Sections 24 and 25 shall be deemed to have come into force on the 31st day of January, 1989.

Idem

**28.** The short title of this Act is the *Rental Housing Protection Act, 1989*.

Short title



## CHAPTER 32

### **An Act to amend the Ontario Municipal Board Act**

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 27 (1) of the *Ontario Municipal Board Act*, being chapter 347 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(1) There shall be a secretary of the Board who shall be appointed under the *Public Service Act*.

Secretary  
R.S.O. 1980,  
c. 418

**2.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**3.** The short title of this Act is the *Ontario Municipal Board Amendment Act, 1989*.

Short title





## CHAPTER 33

### An Act to amend the Education Act

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 10 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 32, section 4, 1989, chapter 1, section 2 and 1989, chapter 2, section 2, is further amended by adding thereto the following paragraph:

34. requiring boards to offer programs that deal with languages other than English or French and governing the establishment and operation of such programs.

**2.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**3.** The short title of this Act is the *Education Amendment Act, 1989 (No. 3)*. Short title





## CHAPTER 34

### An Act to control Automobile Insurance Rates

*Assented to July 13th, 1989*

Whereas, pending the completion of the review of alternative insurance products, it is desirable that legislation be enacted to control premiums, as provided in this Act; Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

#### 1.—(1) In this Act,

**Definitions**

“automobile insurance” has the same meaning as in section 1 of the *Insurance Act*, except that it does not include insurance for any motor vehicle or trailer that may be operated legally on a highway without a permit issued under section 7 of the *Highway Traffic Act* other than a motorized snow vehicle;

R.S.O. 1980,  
cc. 218, 198

“Board” means the Ontario Automobile Insurance Board;

“capped rate”, means, in respect of a coverage under a contract of automobile insurance, the lesser of,

- (a) the premium that would have been charged for the coverage for comparable risks for a term commencing on the 17th day of April, 1989 had the premium been calculated using the rules, procedures and factors used by the insurer on that date, plus an amount equal to 7.6 per cent of that premium,
- (b) the premium that would be charged for the coverage for comparable risks using the Facility Association rate in effect at the beginning of the term of the contact;

“Facility Association rate” means the premium for a coverage determined under the Plan of Operation of the Facility Association under the *Compulsory Automobile Insurance Act*;

R.S.O. 1980,  
c. 83

R.S.O. 1980, c. 218 “insurer” means an insurer licensed under the *Insurance Act* and carrying on the business of automobile insurance but does not include an insurer whose licence is limited to contracts of reinsurance;

“regulations” means the regulations made under this Act.

Facility Association  
R.S.O. 1980, c. 83 (2) The Facility Association established under the *Compulsory Automobile Insurance Act* shall be deemed to be a person for the purposes of this Act and any proceeding before the Board or a court under this Act may be instituted by or against it in its own name.

Rates capped 2.—(1) Except as permitted by the regulations, no insurer shall charge any premium for a coverage under a contract of automobile insurance the term of which commences after the 31st day of May, 1989 that exceeds the capped rate for the coverage.

Idem (2) Except as permitted by this Act or the regulations, the Facility Association shall not increase the Facility Association rate in respect of any coverage.

Function of Board 3. The Board shall monitor for compliance with this Act.

Information 4.—(1) An insurer shall make a return to the Board, in such form and at such times as the Board may require, showing such information with respect to rates charged by the insurer in relation to contracts of automobile insurance together with such other information concerning such rates and contracts as the Board may require.

Idem (2) Every return under subsection (1) shall be verified by the statutory declaration of an officer of the insurer and the declaration shall be in such form as the Board may specify.

Application of 1988, c. 18, ss. 2-18 5.—(1) Sections 2 to 18 of the *Ontario Automobile Insurance Board Act, 1988* apply with necessary modifications to matters arising under this Act.

Non-application of 1988, c. 18, s. 33 (2) Section 33 of the *Ontario Automobile Insurance Board Act, 1988* ceases to have effect until a day to be named by proclamation of the Lieutenant Governor.

Board orders (3) The orders of the Board issued the 1st day of February, 1989, the 13th day of February, 1989 and the 16th day of March, 1989 shall not take effect.

Facility Association rate 6.—(1) The Facility Association may increase the Facility Association rate in respect of any coverage under contracts of

automobile insurance by an amount not exceeding 7.6 per cent of the Facility Association rate in effect on the 17th day of April, 1989.

(2) The Facility Association shall file all rates that are increased under subsection (1) with the Board before the rates take effect. Filing

(3) A rate increase under this section may apply only to contracts of automobile insurance, the terms of which commence after the 31st day of May, 1989. Effective date

**7.—**(1) Every person who contravenes or fails to comply with this Act, the regulations or an order of the Board is guilty of an offence and on conviction is liable to a fine of not more than \$25,000, in the case of an individual, and not more than \$100,000, in any other case. Offences and penalties

(2) If a corporation or the Facility Association contravenes or fails to comply with this Act, the regulations or an order of the Board, every officer or director thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or Facility Association, as the case may be, has been prosecuted or convicted. Parties

(3) A prosecution for an offence under this Act shall not be instituted except with the consent in writing of the Board. Consent

(4) A prosecution for an offence under this Act shall not be instituted more than two years after the facts upon which the prosecution is based first came to the knowledge of the Board. Limitation period

**8.—**(1) The Lieutenant Governor in Council may make regulations, Regulations

- (a) permitting insurers to increase their capped rates in accordance with the regulations;
- (b) exempting insurers and the Facility Association from the requirements of this Act in respect of such categories of automobile insurance, such coverages or such classes of risk exposure as may be set out in the regulations;
- (c) permitting the Facility Association to increase Facility Association rates in accordance with the regulations.



Idem

(2) A regulation may be general or particular in its application.

Conflict with  
1988, c. 18

**9.** If there is a conflict between a provision of this Act or of a regulation and a provision of the *Ontario Automobile Insurance Board Act, 1988* or an order of the Board under that Act, the provision of this Act or of the regulation prevails.

Repeal

**10.** This Act is repealed on the earlier of,

(a) the 31st day of December, 1990; or

(b) a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**11.** This Act shall be deemed to have come into force on the 17th day of April, 1989.

Short title

**12.** The short title of this Act is the *Automobile Insurance Rates Control Act, 1989*.

## CHAPTER 35

### An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) The Lieutenant Governor in Council is hereby authorized to raise from time to time by way of loan in any manner provided by the *Financial Administration Act* such sum or sums of money as are considered necessary for discharging any indebtedness or obligation of Ontario, for making any payments authorized or required by any Act to be made out of the Consolidated Revenue Fund or for reimbursing the Consolidated Revenue Fund for any moneys expended for any of such purposes, provided that the principal amount of any securities issued and temporary loans raised under the authority of this Act shall not exceed in the aggregate \$2,600,000,000.

Loans  
authorized  
R.S.O. 1980,  
c. 161

(2) The sum of money authorized to be raised by subsection (1) for the purposes mentioned therein shall include the principal amounts of Province of Ontario debentures issued to the Teachers' Superannuation Fund under authority of the *Teachers' Superannuation Act, 1983* but shall be in addition to all sums of money authorized to be raised by way of loan under any other Act.

Idem  
1983, c. 84

**2.** No money shall be raised by way of loan under subsection 1 (1) except to the extent authorized by order of the Lieutenant Governor in Council made on or before the 30th day of September, 1990.

Limitation

**3.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**4.** The short title of this Act is the *Ontario Loan Act, 1989*.

Short title





## CHAPTER 36

### An Act to amend the Power Corporation Act

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. The *Power Corporation Act*, being chapter 384 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:**

**55a.**—(1) The Corporation, pursuant to the regulations made under this section, shall pay annually to the Treasurer of Ontario fees, Fees re: debt

- (a) in respect of guarantees given by the Lieutenant Governor in Council under this Act; and
- (b) in respect of sums advanced or applied under section 47.

(2) Subsection (1) applies in respect of guarantees given and sums advanced or applied before or after the coming into force of this section. Application

(3) The Lieutenant Governor in Council may make regulations respecting the calculation of the fees referred to in subsection (1) and respecting the manner in which, and the time at which, they are to be paid. Regulations

**2. This Act comes into force on the day it receives Royal Assent.** Commence-  
ment

**3. The short title of this Act is the *Power Corporation Amendment Act, 1989*.** Short title



## CHAPTER 37

### An Act to amend the Fuel Tax Act, 1981

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** Section 1 of the *Fuel Tax Act, 1981*, being chapter 59, as amended by the Statutes of Ontario, 1985, chapter 23, section 1, is further amended by adding thereto the following clause:

(ha) “fuel in bulk” means fuel transported or transferred by any means other than in a fuel tank of a motor vehicle in which fuel for generating power in the motor vehicle is kept.

**(2)** Clause 1 (j) of the said Act is repealed and the following substituted therefor:

(j) “importer” means a person who brings or causes to be brought into Ontario fuel in bulk.

**2.** Subsection 4 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 23, section 2, is repealed and the following substituted therefor:

(1) Every person who is a collector, importer, registered consumer or purchaser shall pay to the Treasurer a tax at the rate of,

Tax on clear  
fuel

(a) 10.9 cents per litre on each litre of clear fuel received or used by the person in Ontario to generate power in a motor vehicle other than railway equipment operated on rails in connection with a public transportation system; and

(b) 3.4 cents per litre on each litre of clear fuel received or used by the person in Ontario to propel railway equipment on rails where such equipment is operated in connection with and as part of a public transportation system.



**3. Subsections 11 (5) and (6) of the said Act are repealed and the following substituted therefor:**

Collection  
of tax

(5) Every importer shall, at the times and in the manner prescribed, collect from any wholesaler, retail dealer or purchaser, to whom the importer sells fuel, the tax collectable and payable under this Act and, for that purpose, every importer is an agent of the Minister for the collection of the tax imposed by this Act.

Transmission  
of tax

(6) Every importer who is a collector shall remit to the Treasurer, at the times and in the manner prescribed, the tax collectable and payable by the importer in respect of the fuel imported by that person.

Security

(7) At the time of entry into Ontario from outside Canada of clear fuel, every importer who is not a collector shall remit to the Treasurer,

- (a) an amount as security equal to the tax under subsection (5) that the importer would be obliged to collect on such clear fuel upon resale of the fuel in Ontario; and
- (b) the tax payable by the importer under subsection 4 (1).

Payment

(8) The remittance required by subsection (7) shall be made to a person authorized by the Minister for forwarding to the Treasurer by certified cheque or money order, payable to the Treasurer.

Returns

(9) Every importer shall, at the time and in the manner prescribed, deliver to the Minister or to a person authorized by the Minister a return with respect to the fuel imported by the importer.

**4. Subsections 19 (1) and (2) of the said Act are repealed and the following substituted therefor:**

Fuel in bulk

(1) Every person carrying fuel in bulk, and the operator of every motor vehicle carrying fuel in bulk, shall, when requested by the Minister or any person authorized by the Minister, give written evidence to the requester of any or all of the following information,

- (a) the name and address of any person from whom the fuel was obtained and the name and address of any person to whom the fuel so obtained was delivered or is to be delivered;

- (b) the quantity of fuel delivered or to be delivered to any person;
- (c) the use or intended use, if known, to be made of any fuel delivered or to be delivered from such motor vehicle.

(2) The Minister or a person authorized by the Minister Detention may detain a motor vehicle carrying fuel in bulk where,

- (a) written evidence requested under subsection (1) is not given;
- (b) the information in the written evidence that is given is false; or
- (c) the importer fails to comply with subsection 11 (7) or fails to deliver any return in accordance with subsection 11 (9).

(2a) The Minister or a person authorized by the Minister Time may detain a motor vehicle under subsection (2) until the written evidence is given, the true information is given, the remittance required by subsection 11 (7) is delivered or the return in accordance with subsection 11 (9) is delivered, as the case requires.

(2b) During any detention under subsection (2), the Liability Crown, or any person acting in the administration and enforcement of this Act, is not liable for any damage to the motor vehicle, its contents, cargo or freight, or to its owner or driver or otherwise that may occur or be alleged to occur by reason of the detention of the motor vehicle pending compliance with subsection (1) and subsections 11 (7) and (9).

**5.—(1)** Subject to subsection (2), this Act shall be deemed Commence-  
ment to have come into force on the 18th day of May, 1989.

(2) Sections 1, 3 and 4 shall come into force on a day to be Idem named by proclamation of the Lieutenant Governor.

**6.** The short title of this Act is the *Fuel Tax Amendment Act, 1989*. Short title





## CHAPTER 38

### An Act to amend the Retail Sales Tax Act

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** Clause (ba) of paragraph 4 of section 1 of the *Retail Sales Tax Act*, being chapter 454 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1989, chapter 15, section 1, is amended by inserting after “*Excise Tax Act (Canada)*” in the second line “or the *Excise Act (Canada)*”.

(2) Paragraph 4 of section 1 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 36, section 1, 1983, chapter 27, section 1 and 1989, chapter 15, section 1, is further amended by striking out “and” at the end of clause (e), by adding “and” at the end of clause (f) and by adding thereto the following clause:

(g) any tax payable by the purchaser under section 2b or 2c,

. . . . .

**2.** Subsection 2 (14) of the said Act is amended by adding at the end thereof “together with any tax payable under section 2b or 2c”.

**3.** The said Act is amended by adding thereto the following section:

**2b.—(1)** Every purchaser of a new pneumatic tire, other than a purchaser referred to in subsection (2), shall pay to Her Majesty in right of Ontario a tax of \$5 in respect of the consumption or use of the tire.

Tax on new  
pneumatic  
tires

(2) The purchaser of a new pneumatic tire is exempt from the tax imposed by this section if,

Exemptions

- (a) the tire is acquired by the purchaser as part of tangible personal property acquired by the purchaser and the purchaser is exempt under subsection 5 (1) from the tax imposed by section 2 in respect of the purchase of the tangible personal property;
- (b) the tire is acquired by the purchaser in replacement of a tire described in clause (a); or
- (c) the tire is attached to or is designed for use on any class or classes of tangible personal property prescribed by the Minister.

Definition of  
"sale" and  
"first sale"

(3) For the purposes of this section,

- (a) any sale of tangible personal property to which a tire is attached, or in connection with which the tire is supplied, is a sale of the tire;
- (b) the first sale of a pneumatic tire means the first sale of the tire that is,
  - (i) a retail sale,
  - (ii) a lease or rental for a term of at least seven days of tangible personal property to which the tire is attached, or in connection with which the tire is supplied, or
  - (iii) a transfer by a vendor, under the terms of a lease or rental agreement referred to in subclause (ii), of the tire in replacement of another tire;
- (c) a purchaser shall be considered to acquire a new pneumatic tire on the date on which,
  - (i) the purchaser acquires the pneumatic tire at the first sale of the tire, if the first sale is in Ontario,
  - (ii) the purchaser is required under subsection 2 (14) to pay the tax imposed by section 2 in respect of tangible personal property, other than a motor vehicle for which a permit is required under the *Highway Traffic Act*, to which the tire is attached or in connection with which the tire is used, if the first sale of the tire was outside of Ontario within the previous six months, or

- (iii) the purchaser is required under subsection 2 (14) to pay the tax imposed by section 2 in respect of a motor vehicle for which a permit is required under the *Highway Traffic Act*, to which the tire is attached or in connection with which the tire is used, if the motor vehicle is a current or prior year model, as defined by the Minister, and the first sale of the tire was outside of Ontario.

R.S.O. 1980,  
c. 198

**4. The said Act is further amended by adding thereto the following section:**

**2c.**—(1) Every purchaser of a new fuel inefficient car, other than a car which is a settler's effect referred to in paragraph 71 of subsection 5 (1) or tangible personal property referred to in paragraph 73 of subsection 5 (1), shall pay to Her Majesty in right of Ontario a tax in respect of the consumption or use of the car in the amount determined under subsection (3).

Tax on new  
fuel  
inefficient  
passenger  
cars

(2) For the purposes of this section,

Definition of  
"fuel  
inefficient  
car" and  
"new fuel  
inefficient  
car"

- (a) a fuel inefficient car is a passenger car, as defined by the Minister, having a highway fuel consumption rating, as determined under subsection (4), of 9.5 or more litres of gasoline or diesel fuel per 100 kilometres; and
- (b) a purchaser shall be considered to be the purchaser of a new fuel inefficient car where,
  - (i) the first sale of the fuel inefficient car to a purchaser is in Ontario and is a retail sale of the car to the purchaser or a rental or lease to the purchaser of the fuel inefficient car for a term of at least one year,
  - (ii) the first sales of the fuel inefficient car to purchasers are in Ontario on or after the 1st day of July, 1989, and are leases or rentals of the car for terms less than one year, and the purchaser acquires the car at such a sale within 180 days of the first such sale,
  - (iii) the first sale of the fuel inefficient car to a purchaser is outside of Ontario on or after the 1st day of July, 1989, and, on the date the purchaser thereof is required under subsection 2 (14) to pay the tax imposed by section 2, the



car is a current or prior year model as defined by the Minister.

Amount of tax

(3) The amount of tax payable under subsection (1) by a purchaser of a new fuel inefficient car shall be the amount of tax appearing in the following table opposite the range of highway fuel consumption ratings which includes the highway fuel consumption rating of the car, except that the total amount of tax payable under this section by all purchasers referred to in subclause (2) (b)(ii) in respect of the same car shall not exceed the amount of tax otherwise determined under this subsection, and each such purchaser shall pay such portion of the total amount of tax which, in the Minister's opinion, reasonably represents the use of the car by that purchaser during the 180 days referred to in subclause (2) (b)(ii):

Highway Fuel Consumption Ratings

<i>Litres per 100 kilometres</i>	<i>Tax</i>
9.5 - 12.0	\$ 600
12.1 - 15.0	\$1,200
15.1 - 18.0	\$2,200
over 18.0	\$3,500

Highway fuel consumption rating

(4) For the purposes of this section, the highway fuel consumption rating of a passenger car shall be deemed to be the lesser of,

- (a) the highway fuel consumption rating most recently published by the Department of Transport (Canada) of cars matching the description of the passenger car, if such a publication is available publicly at the date of sale of the passenger car; or
- (b) 18.1 litres per 100 kilometres.

Rebates and assessments of additional tax

(5) Where the highway fuel consumption rating of a car is subsequently determined, in a manner prescribed by the Minister, to be less than or greater than the rating used in the determination of an amount of tax payable by the purchaser under this section, the Minister may,

- (a) where the subsequent rating is less, rebate with interest to the purchaser, upon receipt of an application therefor in the manner and within the time prescribed by the Minister, the amount of tax paid by the purchaser under this section in excess of the amount of tax that would have been determined using the subsequent rating; or

- (b) where the subsequent rating is greater, assess or reassess the tax payable by the purchaser under this section together with interest from the date the car was acquired.

**5.—(1)** Subsection 5 (1) of the said Act is amended by striking out “this Act” in the third line and inserting in lieu thereof “section 2”.

(2) Paragraph 17 of subsection 5 (1) of the said Act is repealed.

(3) Paragraph 26 of subsection 5 (1) of the said Act is amended by inserting after “thereunder” in the sixth line “or the *National Transportation Act, 1987* (Canada) or regulations made thereunder,”.

**6.** Section 40 of the said Act is repealed and the following substituted therefor:

**40.** Any officer, director or agent of a corporation, or any other person, who directed, authorized, assented to, acquiesced in or participated in the commission of any act by the corporation which is an offence under this Act, or the omission of any act the omission of which is an offence under this Act, is guilty of an offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted of any offence under this Act.

Officers, etc.,  
of  
corporation

**7.—(1)** Clause 45 (3) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 66, section 12, is amended by inserting after “tax” in the first line “imposed by section 2”.

(2) Subclauses (ii) and (iii) of clause 45 (3) (i) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 66, section 12, are repealed and the following substituted therefor:

- (ii) a vehicle that is powered by a gasoline or diesel engine and for which a permit is required under the *Highway Traffic Act*, and any tangible personal property sold as a conversion kit, including the labour provided to install the conversion kit, where the purchaser enters into a written contract for the conversion of the vehicle within ninety days of the date of sale, and the vehicle is in fact converted to permit it to operate in a manner described in

R.S.O. 1980,  
c. 198

sub-subclause (i)(A) or (B) within 180 days of the date of sale of the vehicle, or

- (iii) tangible personal property sold as a conversion kit to be used to convert any vehicle powered by a gasoline or diesel engine into a vehicle that operates in the manner described in sub-subclause (i)(A) or (B), including the labour to install the kit, where the vehicle is not so converted within 180 days of the date of sale of the vehicle,

. . . . .

**(3) Subsection 45 (3) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 36, section 10, 1983, chapter 27, section 16 and 1986, chapter 66, section 12, is further amended by adding thereto the following clause:**

- (k) providing for the rebate of any tax paid by a purchaser under section 2c, where the purchaser is entitled to a rebate referred to in subclause (i)(ii), in connection with the conversion of the vehicle to permit it to operate in the manner described in sub-subclause (i)(i)(A).

**(4) The said subsection 45 (3) is further amended by adding thereto the following clause:**

- (l) providing for the computation, payment and collection of tax imposed by section 2b, in respect of the acquisition of tangible personal property at a sale that is a lease or rental of the tangible personal property, in a manner different from the computation, payment and collection of tax described in subsection 2 (6).

**(5) The said subsection 45 (3) is further amended by adding thereto the following clause:**

- (m) providing for the computation, payment and collection of tax imposed by section 2c, in respect of the acquisition of tangible personal property at a sale that is a lease or rental of the tangible personal property, in a manner different from the computation, payment and collection of tax described in subsection 2 (6).

**(6) The said subsection 45 (3) is further amended by adding thereto the following clause:**



- (n) providing for a rebate or a partial rebate of tax paid on motor vehicles purchased to transport physically disabled persons.

**8.—(1)** Except as provided in subsections (2) to (5), this Act comes into force on the day it receives Royal Assent. Commence-  
ment

(2) Subsection 1 (1) shall be deemed to have come into force on the 2nd day of May, 1988. Idem

(3) Subsection 7 (2) shall be deemed to have come into force on the 18th day of May, 1989 and applies in respect of motor vehicles purchased on, before or after that date. Idem

(4) Subsection 1 (2), sections 2, 3 and 5 and subsections 7 (1), (4) and (6) shall be deemed to have come into force on the 1st day of June, 1989. Idem

(5) Section 4 and subsections 7 (3) and (5) shall be deemed to have come into force on the 1st day of July, 1989. Idem

**9.** The short title of this Act is the *Retail Sales Tax Amendment Act, 1989 (No. 2)*. Short title



## CHAPTER 39

### An Act to amend the Land Transfer Tax Act

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 1 (1) of the *Land Transfer Tax Act*, being chapter 231 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 20, section 1 and 1985, chapter 21, section 1, is further amended by adding thereto the following clauses:

(gb) "Ontario home ownership savings plan" means an Ontario home ownership savings plan under the *Ontario Home Ownership Savings Plan Act, 1988*; 1988, c. 35

(gc) "Ontario home ownership savings plan tax credit", of an individual for a taxation year, means the deduction allowed to the individual under subsection 7 (2a) of the *Income Tax Act* for the taxation year of the individual as determined under that Act; R.S.O. 1980, c. 213

. . . . .

(ia) "registration", of a conveyance, means registration under the *Land Titles Act* or the *Registry Act*, and "registered" has a corresponding meaning. R.S.O. 1980, cc. 230, 445

**2.—(1)** Clause 2 (1) (c) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 21, section 2, is repealed and the following substituted therefor:

(c) at the rate of,

(i) one-half of 1 per cent of the value of the consideration for the conveyance up to and including \$55,000,



- (ii) 1 per cent of the value of the consideration which exceeds \$55,000 up to and including \$250,000, and
  - (iii) 1.5 per cent of the value of the consideration which exceeds \$250,000; and
- . . . . .

**(2) Clause 2 (1) (d) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 21, section 2, is repealed and the following substituted therefor:**

- (d) where the value of the consideration for the conveyance exceeds \$400,000 and the conveyance is a conveyance of land that contains at least one and not more than two single family residences, an additional tax of one-half of 1 per cent of the amount by which the value of the consideration exceeds \$400,000.

**(3) Subsection 2 (1a) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 21, section 2, is repealed and the following substituted therefor:**

Apportion-  
ment of  
consideration

(1a) Where, in respect of a conveyance of land,

- (a) subsection (2) does not apply;
- (b) the value of the consideration for the conveyance exceeds \$400,000; and
- (c) a part of the land being conveyed is used for a purpose other than residential purposes,

the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the land used in connection with a single family residence, and the person tendering the conveyance for registration is, despite subsection (1), liable to the additional tax of one-half of 1 per cent only upon the amount by which the value of the consideration determined by the Minister to be attributable to land used in connection with a single family residence exceeds \$400,000.

**(4) Subsection 2 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 21, section 2, is repealed and the following substituted therefor:**

(6) Where only a part of the land being conveyed is unrestricted land and the conveyance is to or in trust for any non-resident person, the Minister may, to the extent the Minister considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the unrestricted land being conveyed, and the person tendering the conveyance for registration is, despite subsection (1) or (2), liable to a tax,

Apportionment of consideration

- (a) with respect to the amount of the value of the consideration determined by the Minister to be reasonably attributable to the unrestricted land being conveyed, computed at the rate of,
  - (i) 1 per cent of the amount determined by the Minister which does not exceed \$250,000,
  - (ii) 1.5 per cent of the amount determined by the Minister which exceeds \$250,000, and
  - (iii) any tax required to be calculated under clause (1) (d) or subsection (1a), whichever is the lesser, on the amount determined by the Minister; and
- (b) computed at the rate of 20 per cent of the amount of the value of the consideration for the conveyance that is determined by the Minister not to be reasonably attributable to the unrestricted land being conveyed.

**3. Subsection 4 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 21, section 3, is repealed and the following substituted therefor:**

(1) There shall be filed with the collector and attached by the collector to the conveyance to which it relates an affidavit in the prescribed form setting out,

Contents of affidavit as to consideration

- (a) the true value of the consideration for the conveyance;
- (b) the true amount in cash and the value of any property or security included in the value of the consideration;
- (c) the amount or value of any lien or encumbrance subject to which the conveyance was made;

- (d) whether the transferee to whom the land is being conveyed is a non-resident person or the trustee of a non-resident person;
- (e) where the value of the conveyance exceeds \$400,000, whether the land being conveyed contains at least one and not more than two single family residences; and
- (f) any other information prescribed by the Minister that in the Minister's opinion is required for the purpose of administering and enforcing this Act.

**4. The said Act is amended by adding thereto the following section:**

Refund on  
purchase of  
eligible home  
under  
1988, c. 35

**7a.—(1) Where, in respect of a conveyance of land,**

- (a) subsection 2 (2) does not apply;
- (b) the tax payable under subsection 2 (1) was paid with respect to the conveyance and the conveyance was registered after the 17th day of May, 1989;
- (c) a transferee named in the conveyance was a plan-holder of an Ontario home ownership savings plan and the assets of that plan have been released under section 5 of the *Ontario Home Ownership Savings Plan Act, 1988* for the purpose of purchasing the qualifying eligible home of the transferee under that Act;
- (d) the qualifying eligible home of the transferee referred to in clause (c) now forms part of the land subject to the conveyance; and
- (e) the transferee, or his or her spouse, within the meaning of the *Ontario Home Ownership Savings Plan Act, 1988*, if the transferee is married,
  - (i) is entitled to receive an Ontario home ownership savings plan tax credit for the taxation year in which the assets of the transferee's Ontario home ownership savings plan were released for the purpose described in clause (c), or would have been entitled to such a tax credit for that taxation year if the transferee had made a contribution to the plan in that taxation year, or would have been so entitled



but for subsection 3 (2) of the *Ontario Home Ownership Savings Plan Act, 1988*, or 1988, c. 35

- (ii) was entitled to receive and did receive an Ontario home ownership savings plan tax credit for either of the two taxation years ending before the date the assets of the plan were released for the purpose described in clause (c),

the Minister may, upon application therefor within the prescribed time and in the prescribed manner, refund to the transferee the amount of tax determined under subsection (2) with respect to the conveyance, without interest thereon, where the Minister is satisfied that the qualifying eligible home had a total purchase price of not more than \$200,000.

(2) The amount of tax which may be refunded to a transferee under subsection (1) is, Amount of refund

- (a) where the total purchase price of the qualifying eligible home does not exceed \$150,000, the amount of the tax paid under subsection 2 (1), or, if the transferee is not the only transferee named in the conveyance, the portion of such tax applicable to the transferee's interest acquired under the conveyance including, where the transferee is married to a spouse within the meaning of the *Ontario Home Ownership Savings Plan Act, 1988*, the spouse's interest acquired under the conveyance; and 1988, c. 35
- (b) where the total purchase price of the qualifying eligible home exceeds \$150,000 but does not exceed \$200,000, the percentage of the tax paid under subsection 2 (1) appearing on the following table beside the range of total purchase prices which includes the total purchase price of the transferee's qualifying eligible home, except that if the transferee is not the only transferee named in the conveyance, the amount of the refund shall not exceed the percentage determined under this clause of the portion of the tax applicable to the transferee's interest acquired under the conveyance including, where the transferee is married to a spouse within the meaning of the *Ontario Home Ownership Savings Plan Act, 1988*, the spouse's interest acquired under the conveyance:

<i>Total Purchase Price</i>	<i>Percentage of Tax Paid</i>
\$150,001 - \$155,500	90 per cent
\$155,501 - \$161,000	80 per cent
\$161,001 - \$166,500	70 per cent
\$166,501 - \$172,000	60 per cent
\$172,001 - \$177,500	50 per cent
\$177,501 - \$183,000	40 per cent
\$183,001 - \$188,500	30 per cent
\$188,501 - \$194,000	20 per cent
\$194,001 - \$200,000	10 per cent

Total  
purchase  
price defined

(3) Subject to subsection (4), "total purchase price of a qualifying eligible home" for the purposes of this section means,

1988, c. 35

(a) where the conveyance is of land upon which there is an eligible home under the *Ontario Home Ownership Savings Plan Act, 1988* at the time of registration of the conveyance, the value of the consideration for the conveyance; or

(b) where the conveyance is of land upon which there was not yet an eligible home under the *Ontario Home Ownership Savings Plan Act, 1988* at the time of registration of the conveyance, the aggregate of the value of the consideration for the conveyance and the total cost for the construction or acquisition of the eligible home which subsequently forms part of the land.

Where part  
of land  
not for  
residential  
use

(4) Where a part of the land conveyed is not used for residential purposes at the time of the application for a refund under this section, the Minister may, to the extent that the Minister considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the land used in connection with the transferee's qualifying eligible home and, for the purposes of determining the total purchase price of the qualifying eligible home and the amount of the refund payable under this section, the value of the consideration for the conveyance shall be deemed to be the amount so determined by the Minister and the amount of tax paid under subsection 2 (1) shall be deemed to be the amount of such tax which would have been payable thereon.

Offence

(5) Any person who makes or assists in making a statement in any application for a refund under this section, or in any document provided to the Minister in connection therewith, that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omis-

sion of which makes the statement false or misleading is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

(6) Where a refund is made under this section to a transferee and it is subsequently determined that the transferee was not entitled to the refund, or was entitled only to a refund in a lesser amount, the amount of the refund to which the transferee was not entitled shall, for the purposes of this Act, be deemed to be tax imposed by section 2 which was required to have been paid by the transferee on the date the refund was made to the transferee by the Minister.

Recovery of  
refund  
wrongly  
obtained

**5. Subsection 10 (4) of the said Act is repealed and the following substituted therefor:**

(4) The Minister may assess or reassess any person for any tax payable by the person under this Act within four years from the day the tax became payable, except that, where the Minister establishes that a person has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in supplying any information under this Act, in making any affidavit required by this Act, or in omitting to disclose any information, or the person has failed to deliver any return required by this Act, the Minister may assess or reassess at any time the Minister considers reasonable the tax payable by such person.

Limitation on  
assessment

**6.—(1) Subsection 18 (1) of the said Act is repealed and the following substituted therefor:**

(1) The Minister may make regulations,

Regulations

- (a) prescribing forms for the purposes of this Act and providing for their use;
- (b) providing for the approval by the Minister or a person designated by the Minister of prescribed forms containing variations;
- (c) providing that a variation of a prescribed form is void unless approved by the Minister or a person designated by the Minister.

**(2) Subsection 18 (2) of the said Act is amended by adding thereto the following clauses:**

- (ga) prescribing any matter required by this Act to be prescribed by the regulations;



(gb) defining any word or expression used in this Act that has not already been expressly defined in this Act;

(gc) providing for the method of calculating the total cost for the construction or acquisition of an eligible home for the purposes of section 7a.

**Commence-  
ment**

**7.—(1) Except as provided in subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.**

**Idem**

**(2) Sections 2 and 3 shall be deemed to have come into force on the 1st day of June, 1989.**

**Idem**

**(3) Section 4 shall be deemed to have come into force on the 18th day of May, 1989.**

**Short title**

**8. The short title of this Act is the *Land Transfer Tax Amendment Act, 1989*.**

## CHAPTER 40

### **An Act to revise the Ontario Mineral Exploration Program Act**

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. In this Act,**

**Definitions**

“development” means preparing a deposit of a prescribed mineral resource for production;

“exploration” means prospecting or exploring for a prescribed mineral resource;

“incentive” means a grant, loan, payment or other financial concession made under this Act;

“incentive program” means a program prescribed under this Act to encourage exploration or development in Ontario;

“Minister” means the Minister of Mines;

“Ministry” means the Ministry of the Minister;

“prescribed” means prescribed by the regulations;

“project” means a project of exploration or development in Ontario;

“regulations” means the regulations made under this Act.

**2. The Lieutenant Governor in Council may make regulations to establish incentive programs.**

**Incentive  
programs**

**3. The Minister may designate a project under an incentive program for a specified period.**

**Designation  
of project**

**4. The Minister may provide an incentive to any person who,**

**Incentives**

(a) is ordinarily resident in Canada; and

(b) meets the prescribed eligibility conditions of an incentive program.

Incentive not  
assignable,  
etc.

**5.** An incentive under this Act may not be assigned, charged, attached, anticipated or given as security, and any transaction purporting to assign, charge, anticipate or give as security an incentive is void.

Information  
confidential

**6.—(1)** Except as provided in subsections (2), (3) and (4), all information obtained under this Act by an employee or agent of the Ministry is privileged and confidential and no such employee or agent shall knowingly communicate or allow to be communicated to any person not legally entitled thereto any such information, or allow any person not legally entitled to do so to inspect or have access to any statement or other writing containing such information.

Exception

(2) Any information referred to in subsection (1) obtained by an employee or agent of the Ministry in the administration of this Act may be communicated to an employee of,

(a) the Department of National Revenue of Canada; or

(b) the Ministry of Revenue or the Ministry of Treasury and Economics.

Idem

(3) The name of a person who has received incentives under this Act and the aggregate of incentives received by the person may be published or disclosed by the Minister.

Idem

(4) One year or more after the expiry of the designation of a project designated under this Act, the Minister may disclose any technical reports, maps, plans or other particulars of the project that were submitted with any application relating to the project.

Return of  
incentive  
where not  
entitled

**7.—(1)** A person who receives an incentive to which the person is not entitled or a payment in excess of an incentive to which the person is entitled shall forthwith return to the Minister the amount or excess amount, as the case may be.

Recovery of  
incentive  
where not  
entitled

(2) If a person receives an incentive to which the person is not entitled or a payment in excess of an incentive to which the person is entitled, the amount or excess amount, as the case may be, may be recovered in any court of competent jurisdiction as a debt due to the Crown in proceedings commenced at any time, and, where applicable, the amount of



any such indebtedness may be recovered in the manner provided for in the *Financial Administration Act*.

R.S.O. 1980,  
c. 161

**8.—(1)** Every person is guilty of an offence who,

Offence

- (a) knowingly furnishes false or misleading information in an application or statement required by this Act or the regulations;
- (b) knowingly fails to disclose any information that is required to be disclosed by this Act or the regulations;
- (c) knowingly contravenes subsection 7 (1); or
- (d) contravenes subsection 6 (1) or 12 (1).

(2) If a corporation commits an offence under this Act, every director or officer of the corporation who authorizes, permits or acquiesces in the commission of the offence is a party to and is guilty of an offence and on conviction is liable to the penalty provided for the offence whether or not the corporation has been prosecuted or convicted.

Director or  
officer of  
corporation

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$5,000.

Individual

(4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$50,000.

Corporation

(5) No proceeding in respect of an offence under this Act shall be commenced more than five years after the offence was committed.

Limitation

**9.—(1)** The Minister may, for any purpose relating to the administration or enforcement of this Act, require from any person whose project has been designated under this Act any information, or the production of any document, within such reasonable time as is stipulated in the request.

Request for  
information  
or document

(2) If a person does not comply within a reasonable time with a request under subsection (1), the Minister may by written notice declare the person to be ineligible for incentives.

Loss of  
eligibility  
upon failure  
to comply

(3) For purposes of section 7, a person declared under subsection (2) to be ineligible for incentives shall be deemed not to be entitled to any incentives received in respect of the project to which the request under subsection (1) relates.

Return of  
incentive

Appointment  
of persons to  
make  
inspections

**10.**—(1) The Minister may appoint persons to make inspections under this Act.

Certificate of  
appointment

(2) A person appointed under subsection (1) exercising a power under this Act shall, on request, produce his or her certificate of appointment.

Inspections

**11.**—(1) For the purpose of ensuring compliance with this Act and the regulations, a person appointed under subsection 10 (1) may,

- (a) enter any place at any reasonable time where,
  - (i) any business associated with a project designated under this Act is carried on or any property relating to such a project is kept,
  - (ii) anything is done in connection with a business referred to in subclause (i), or
  - (iii) any document relating to a business referred to in subclause (i) is kept;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) examine or audit any document or thing produced in response to a request under clause (b);
- (d) upon giving a receipt therefor, remove from a place documents or things produced in response to a request under clause (b) for the purpose of making copies or extracts; and
- (e) examine any land, property, process or matter that may be relevant to the inspection.

Entry to  
dwellings

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant,

- (a) to do anything set out in clause (1) (a), (c), (d) or (e); or
- (b) to enter and search a room actually used as a dwelling.

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that,

Requirements  
for warrant  
to issue

(a) in the case of a warrant to be issued under clause (3) (a), a person appointed under subsection 10 (1) has been prevented from doing anything permitted under clause (1) (a), (c), (d) or (e) or there is reasonable ground to believe that such a person may be prevented from doing any of those things; or

(b) in the case of a warrant to be issued under clause (3) (b), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe will afford evidence relevant to an inspection under this Act.

(5) A warrant issued under this section shall specify the hours and days during which it may be executed.

Execution of  
warrant

(6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made.

Expiry

(7) A warrant under this section may be issued or renewed upon application without notice.

Notice not  
required

(8) A warrant under this section may be renewed, before or after expiry, for any reason for which it may be issued.

Renewal of  
warrant

(9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant.

Assistance

(10) A person taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken.

Copies

(11) Copies of, or extracts from, documents and things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Admissibility  
of copies

**12.—**(1) No person shall obstruct a person carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.

Obstruction



Facilitating  
inspection

(2) It is a condition of every project designated under this Act that the person who applied for designation of the project facilitate any inspection relating to the project.

Advisory  
committees

**13.**—(1) The Minister may appoint advisory committees to advise him or her on any matters relating to this Act.

## Idem

(2) The Minister may fix the terms of reference of an advisory committee.

## Idem

(3) The Minister may appoint the chairperson and members of an advisory committee and fix their remuneration and expenses.

Delegation of  
powers and  
duties

**14.** Where, under this Act, a power is granted to or vested in or a duty is imposed upon the Minister, the Minister may delegate in writing that power or the obligation to perform that duty to the Deputy Minister of Mines, to an employee of the Ministry or to any other public servant, subject to the conditions set out in the delegation.

## Regulations

**15.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the eligibility conditions of any incentive program;
- (b) prescribing the evidence to be furnished by a person applying for an incentive or designation of a project;
- (c) prescribing anything that is referred to in this Act as prescribed;
- (d) defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act.

Regulations  
may be  
retroactive

(2) A regulation is, if it so provides, effective with reference to a period before it was filed.

General,  
specific or  
limited  
regulation

(3) Any regulation may be general or specific or of limited application.

## Repeals

**16.** The *Ontario Mineral Exploration Program Act*, being chapter 346 of the Revised Statutes of Ontario, 1980 and section 46 of the *Equality Rights Statute Law Amendment Act*, 1986, being chapter 64, are repealed.

**17.** Despite section 16, the *Ontario Mineral Exploration Program Act*, being chapter 346 of the Revised Statutes of Ontario, 1980, continues to apply to any program of mineral exploration designated by the Minister under subsection 2 (1) of the said Act. Transition

**18.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**19.** The short title of this Act is the *Ontario Mineral Exploration Program Act, 1989*. Short title





## CHAPTER 41

### **An Act respecting the amalgamation of the City of Sarnia and the Town of Clearwater and the addition of the amalgamated City to the County of Lambton**

*Assented to July 13th, 1989*

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## Definitions

**1. In this Act,**

“City” means The Corporation of the City of Sarnia-Clearwater as created by the amalgamation of the former municipalities under section 2;

“City of Sarnia” means the former municipality of The Corporation of the City of Sarnia;

“County” means The Corporation of the County of Lambton;

“County Council” means the council of the County;

“former municipalities” means The Corporation of the City of Sarnia and The Corporation of the Town of Clearwater as they existed before the 1st day of January, 1991;

“local municipality” means a city, town, village and township forming part of the County for municipal purposes but does not include a former municipality;

“Minister” means the Minister of Municipal Affairs;

“Municipal Board” means the Ontario Municipal Board;

“municipality” means a municipality, as defined in the *Municipal Affairs Act*, and a metropolitan, regional or district municipality and the County of Oxford or a local board of a metropolitan, regional or district municipality or of the County of Oxford; R.S.O. 1980,  
c. 303

“pre-election period” means the period from the 1st day of January, 1991 until the 30th day of November, 1991, inclusive;

“prescribed” means prescribed by regulations made under this Act;

“Town of Clearwater” means the former municipality of The Corporation of the Town of Clearwater.

## PART I

### LOCAL MUNICIPALITIES

**2.—(1)** On the 1st day of January, 1991, The Corporation of the City of Sarnia and The Corporation of the Town of Clearwater are amalgamated under the name of “The Corporation of the City of Sarnia-Clearwater”. Amalgamation

**(2)** Despite section 5 of the *Territorial Division Act*, the City forms part of the County for municipal purposes. City forms part of County  
R.S.O. 1980,  
c. 497

**(3)** The City shall not apply for the annexation or amalgamation of any land before the 1st day of January, 2016, unless the County Council and the council of every local municipality the lands of which are part of the proposed annexation or Future amalgamation, annexation by agreement



amalgamation agree, by resolution, to the proposed application being made.

Name of City  
to be put to  
a vote

**3.—(1)** The City shall submit the question “Do you want the new City to be named Sarnia” to the electors of the City at the 1991 regular election.

Change of  
name

**(2)** If the majority of votes cast in response to the question are in the affirmative, the name of the City shall become The Corporation of the City of Sarnia effective the 1st day of January, 1992.

Idem

**(3)** After the 1st day of January, 1992, the Minister may by order alter the name of the City.

Composition  
of interim  
City council  
R.S.O. 1980,  
c. 302

**4.—(1)** Despite subsection 30 (1) of the *Municipal Act*, during the pre-election period, the council of the City shall be composed of,

- (a)** a mayor, who shall be the person who was the mayor of the City of Sarnia on the 31st day of December, 1990;
- (b)** a deputy mayor, who shall be the person who was the mayor of the Town of Clearwater on the 31st day of December, 1990;
- (c)** a reeve, who shall be the person who was the reeve of the Town of Clearwater on the 31st day of December, 1990;
- (d)** a deputy reeve, who shall be the person who was the deputy reeve of the Town of Clearwater on the 31st day of December, 1990; and
- (e)** twelve other members,
  - (i)** eight of whom shall be the persons who were the members of the council, except the mayor, of the City of Sarnia on the 31st day of December, 1990, and
  - (ii)** four of whom shall be the persons who were the members of the council, except the mayor, reeve and deputy reeve, of the Town of Clearwater on the 31st day of December, 1990.

First meeting

**(2)** The first meeting of the council shall be held not later than the 8th day of January, 1991.

(3) Each member of council has one vote.

One vote

(4) Despite section 72 of the *Municipal Act*, if the mayor of the City is absent from the municipality or is unable or unwilling to act or the office of mayor is vacant, the deputy mayor shall act in the place of the mayor and, while so acting, has all the rights and powers of the mayor.

Acting mayor  
R.S.O. 1980,  
c. 302

5.—(1) The City shall consist of four wards as described in the Schedule.

Wards

(2) All wards in the former municipalities are dissolved.

Dissolution  
of former  
wards

6.—(1) Despite sections 30, 31, 32, 34 and 36 of the *Municipal Act*, but subject to section 7, the council of each local municipality shall be composed of a mayor, who shall be elected by a general vote of the electors of the local municipality and who shall be the head of the council, and the following other members:

Composition  
of councils

1. The City—eight members consisting of,
  - i. four members who shall be elected by wards, one from each ward, as members of the council of the City and of the County Council, and
  - ii. four members who shall be elected by wards, one from each ward, as members of the council of the City.
2. A town—six members who shall be elected by a general vote of the electors of the town.
3. A township—four members who shall be elected by a general vote of the electors of the township.
4. A village—four members who shall be elected by a general vote of the electors of the village.

(2) Each member of the council of a local municipality has one vote.

One vote

(3) Despite section 37 of the *Municipal Act*, a person is qualified to be elected or hold office under paragraph 1 of subsection (1) if, in addition to being qualified under section 37 of the *Municipal Act*, that person at any time during the period commencing on the Tuesday following the first Monday in September in an election year and ending on the Monday in October that precedes polling day by twenty-eight

Qualifi-  
cations to  
hold office

days is a resident in or is the owner or tenant of land in or is the spouse of such an owner or tenant in the ward in which that person is seeking to be elected or to hold office.

O.M.B.  
order  
R.S.O. 1980,  
c. 302

7.—(1) Upon the application of a local municipality under subsection 13 (2) of the *Municipal Act*, or upon the petition of electors under subsection 13 (3) of that Act, the Municipal Board may, by order,

- (a) divide or redivide the local municipality into wards and designate the name or number each ward shall bear and declare the date when the division or redivision takes effect;
- (b) alter or dissolve any or all of the wards in the local municipality and declare the date when the alteration or dissolution takes effect; and
- (c) vary the composition of the council of the local municipality.

Limitation on  
order

(2) No order made under subsection (1),

- (a) shall take effect before the 1st day of December, 1994; or
- (b) shall alter the total number of members who represent the local municipality on the County Council or the number of votes assigned to the members under this Act.

Idem

(3) Despite subsection (1), the mayor of the local municipality shall continue to be elected by a general vote of the electors of the local municipality and shall be the head of council of the local municipality and a member of the County Council.

Where  
inquiry by  
Minister

(4) Where the Minister is inquiring into the structure, organization and methods of operation of a local municipality or the County, the Minister may give notice to the Municipal Board of the inquiry and request that any application or petition made under subsection (1) be deferred until the inquiry has been completed.

Idem

(5) If notice is given under subsection (4), all proceedings in the application or petition are stayed until the Minister gives notice to the Municipal Board that they may be continued.

No board of  
control

(6) A local municipality shall not have a board of control.



**8.—(1)** Every by-law and resolution of a former municipality shall be deemed to be a by-law or resolution of the City and shall remain in force in the area of the former municipality until the earlier of,

By-laws,  
resolutions of  
former  
municipalities

- (a) the date it is amended or repealed by the council of the City; or
- (b) the 31st day of December, 1992.

(2) Despite subsection (1), any by-law of a former municipality passed under section 34 of the *Planning Act, 1983*, or a predecessor of that section, and any official plan of a former municipality approved under the *Planning Act, 1983*, or a predecessor of that Act, shall remain in force until amended or repealed.

By-laws,  
official plans  
under  
1983, c. 1

(3) If a former municipality has commenced procedures to enact a by-law that requires the approval of a minister of the Crown, the Municipal Board or a provincial agency and the approval has not been obtained before the 31st day of December, 1990, the council of the City may continue the procedures to enact the by-law and subsection (1) applies with necessary modifications to the by-law.

By-laws that  
require  
approval

(4) Nothing in this section repeals or authorizes the amendment or repeal of,

By-laws,  
resolutions  
not affected

- (a) by-laws or resolutions of the former municipalities passed under section 45, 58 or 61 of the *Drainage Act* or a predecessor of those sections; and

R.S.O. 1980,  
c. 126

- (b) by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the councils of the former municipalities.

**9.** Except as otherwise provided in this Act, the assets and liabilities of the former municipalities and their local boards become assets and liabilities of the City or a local board thereof without compensation, and the City and its local boards stand in the place of the former municipalities and their local boards.

Assets and  
liabilities  
transferred to  
City

**10.** All taxes, charges or rates levied by a former municipality under any general or special Act that are due and unpaid on the 31st day of December, 1990 shall, after that date, be taxes, charges or rates due and payable to the City and may be collected and recovered by the City as if the taxes, charges or rates had been imposed by the City.

Taxes,  
charges, rates  
transferred to  
City

Dissolution  
of  
committees  
of adjustment

**11.**—(1) Subject to subsection (4), on the 1st day of January, 1991, the committees of adjustment of the former municipalities are dissolved.

City to  
establish  
committee of  
adjustment

(2) The City shall establish a committee of adjustment under section 43 of the *Planning Act, 1983*.

Applications  
continued

(3) All applications to the committees of adjustment of the former municipalities shall be deemed to be applications to and shall be continued by the committee of adjustment of the City.

Continuing  
matters

(4) The committees of adjustment dissolved under subsection (1) and the terms of office of the members of the committees shall continue to the 31st day of January, 1991 for the purpose of making a decision on any application for which a hearing is completed before the 1st day of January, 1991.

Dissolution  
of  
committees,  
boards under  
1982, c. 7,  
R.S.O. 1980,  
cc. 80, 417

**12.**—(1) The council of the City shall be deemed to be a recreation committee under the *Ministry of Tourism and Recreation Act, 1982*, a committee of management of a community recreation centre under the *Community Recreation Centres Act* and a board of park management under the *Public Parks Act* and all such committees and boards of the former municipalities are dissolved on the 1st day of January, 1991.

Idem

(2) All by-laws and resolutions of the boards and committees dissolved under subsection (1) are continued as by-laws and resolutions of the City, and shall remain in force until the earlier of,

(a) the date they are amended or repealed by the City;  
or

(b) the 31st day of December, 1992.

Certain  
by-laws,  
resolutions  
continue

(3) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the boards and committees dissolved under subsection (1).

Repeal of  
certain  
by-laws,  
resolutions,  
appointments

**13.**—(1) Despite section 8,

(a) the by-laws and resolutions of the City of Sarnia establishing and appointing members to the Canada Day Committee, Committee of Parks and Recreation, Committee of Management of Marshall Gowland Manor, Planning Advisory Committee,

Sarnia Heritage Committee and the Sarnia Museum Board, all of the City of Sarnia, are repealed;

- (b) the by-laws and resolutions of the Town of Clearwater establishing and appointing members to the Planning Advisory Committee of the Town of Clearwater are repealed; and
- (c) the terms of office of the appointees of the City of Sarnia to the Property Standards Committee of the City of Sarnia are terminated.

(2) Nothing in this section prevents the City from or relieves the City of any responsibility for establishing or making appointments to boards and committees. Appointments

**14.**—(1) Despite section 8, the City, on or before the 31st day of January, 1991, shall, Fire departments

- (a) repeal the by-laws of the City of Sarnia and the Town of Clearwater establishing their respective fire departments; and
- (b) establish a fire department for the City.

(2) Every person who is a member of the fire department of the City of Sarnia or the Town of Clearwater on the 1st day of July, 1990 and continues to be a member until the 31st day of December, 1990 becomes a member of the fire department established under clause (1) (b). Fire fighters

(3) In subsection (2), “member” means a full-time fire fighter and a volunteer fire fighter as defined in the *Fire Departments Act*. Definition  
R.S.O. 1980,  
c. 164

**15.** Except as otherwise provided in this Act, the City or a local board thereof shall offer to employ every person who was employed by a former municipality or a local board thereof on the 1st day of July, 1990 and who continued to be so employed until the 31st day of December, 1990. Offer of employment

**16.**—(1) The Police Village of Inwood and the Police Village of Florence are dissolved on the 1st day of January, 1991. Dissolution of police villages

(2) The Municipal Board, upon the application of a local municipality or a local board thereof or of its own motion, may exercise the powers under section 25 of the *Municipal Act* consequent upon the dissolutions. Further powers  
R.S.O. 1980,  
c. 302



No further  
appeal  
R.S.O. 1980,  
c. 347

(3) Sections 94 and 95 of the *Ontario Municipal Board Act* do not apply to decisions or orders made in the exercise of the powers under subsection (2).

## PART II

### COUNTY COUNCIL

Application  
R.S.O. 1980,  
c. 302

**17.** This Part applies despite sections 27, 28 and 29 of the *Municipal Act*.

Interim  
County  
Council

**18.—**(1) During the pre-election period, the County Council shall have thirty-seven members consisting of,

- (a) the mayor, reeve and deputy reeve of the City;
- (b) the reeve of the Village of Alvinston, the Village of Arkona, the Village of Oil Springs and the Village of Thedford; and
- (c) the reeve and deputy reeve of the Town of Forest, the Town of Petrolia, the Village of Grand Bend, the Village of Point Edward, the Village of Watford, the Village of Wyoming, the Township of Bosanquet, the Township of Brooke, the Township of Dawn, the Township of Enniskillen, the Township of Euphemia, the Township of Moore, the Township of Plympton, the Township of Sombra and the Township of Warwick.

Distribution  
of votes

(2) The members of the County Council under subsection (1) shall have a total of seventy-three votes of which,

- (a) the mayor of the City shall have ten votes;
- (b) the reeve and deputy reeve of the City shall each have nine votes;
- (c) the reeve of the Township of Bosanquet and the Township of Moore shall each have three votes;
- (d) the reeve of the Town of Petrolia, the Township of Enniskillen, the Township of Plympton and the Township of Sombra shall each have two votes;
- (e) the deputy reeve of the Township of Bosanquet, the Township of Moore and the Township of Plympton shall each have two votes; and
- (f) all other members shall have one vote.

(3) The first meeting of the County Council shall be held after the council of the City has held its first meeting under subsection 4 (2) but, in any event, not later than the 15th day of January, 1991.

First meeting

(4) Despite subsection 51 (1) of the *Municipal Act*, the County Council established under subsection (1) shall, at the first meeting at which a majority of the members is present, elect one of its members to be warden and, for such election, each member of County Council shall have one vote.

Warden  
R.S.O. 1980,  
c. 302

(5) The term of the warden of the County holding office on the 30th day of November, 1990 is extended until a new warden is elected under subsection (4).

Term of  
office

**19.—**(1) The County Council shall be composed of,

Composition  
of County  
Council

(a) the mayor of each local municipality; and

(b) the four county ward members of the council of the City.

(2) The members of the County Council under subsection (1) shall have a total of thirty-seven votes of which,

Distribution  
of votes

(a) the mayor and each county ward member of the council of the City shall have three votes;

(b) the mayor of the Township of Bosanquet, the Township of Moore and the Township of Plympton shall each have two votes; and

(c) all other members shall have one vote.

(3) The County Council shall review the distribution of votes under subsection (2) on or before the 1st day of January, 2001.

Review

(4) Despite subsection 18 (2) and subsection (2) of this section, upon the recommendation of the Minister, the Lieutenant Governor in Council may by order provide for the manner in which the County Council votes of the mayors of municipalities being amalgamated should be distributed to the local municipalities, other than the City, that would exist after such amalgamation.

Distribution  
of votes of  
warden

**20.—**(1) Despite subsections 19 (2), for the purposes of electing the warden of County Council, each member shall have one vote.

Election of  
warden

County  
warden

(2) The warden of the County Council shall bear the title of county warden.

Vacancies

**21.** The seat of a mayor of a local municipality and the seat of a county ward member of the council of the City becomes vacant if his or her seat on the County Council is declared vacant by the County Council.

Offer of  
employment

**22.** The County or a local board thereof shall offer to employ every person who, on the 1st day of July, 1990, was employed in any undertaking carried on by or on behalf of any former or local municipality or local board thereof that is assumed by the County or a local board thereof under this Act and who continues to be so employed until the 31st day of December, 1990.

By-laws,  
resolutions  
continued

**23.—(1)** Every by-law and resolution of a former or local municipality in respect of any undertaking carried on by or on behalf of a former or local municipality that is assumed by the County under this Act shall be deemed to be a by-law or resolution of the County and shall remain in force in the area of the former or local municipality until the earlier of,

(a) the date it is amended or repealed by the council of the County; or

(b) the 31st day of December, 1992.

By-laws that  
require  
approval

(2) If a former or local municipality has commenced procedures to enact a by-law that requires the approval of a minister of the Crown, the Municipal Board or a provincial agency and the approval has not been obtained before the 31st day of December, 1990, the council of the County may continue the procedures to enact the by-law and subsection (1) applies with necessary modifications to the by-law.

By-laws,  
resolutions  
not affected

(3) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the councils of the former municipalities.

Assets and  
liabilities  
transferred to  
County

**24.** All assets and liabilities of a former or local municipality or a local board thereof in respect of any undertaking carried on by or on behalf of any former or local municipality or local board thereof that is assumed by the County or a local board thereof under this Act become assets and liabilities of the County or a local board thereof without compensation, and the County and its local boards stand in the place of the former or local municipalities and their local boards.



## PART III

## FORMER MUNICIPALITIES

**25.—**(1) The City of Sarnia and the Town of Clearwater <sup>Agreement</sup> shall enter into an agreement with respect to,

- (a) fee structures;
- (b) capital improvements;
- (c) the adequacy of public buildings;
- (d) maintenance of current levels of services;
- (e) shared capital expenditures;
- (f) impost fees;
- (g) capital improvements;
- (h) cash in lieu of parkland;
- (i) organizational structures;
- (j) the financing of capital expenditures;
- (k) capital budgets;
- (l) equipment reserve accounts;
- (m) contributions to reserve accounts;
- (n) shoreline protection;
- (o) public transit;
- (p) rural water supply;
- (q) water meters; and
- (r) major recreation complexes.

(2) The councils of the County, the City of Sarnia and the Town of Clearwater shall establish a joint implementation <sup>Joint committee</sup> committee to make recommendations with respect to the agreement and any other matter set out in this Act.

(3) The joint committee shall submit its recommendations <sup>Recommendations to be submitted to Minister</sup> to the Minister on or before the 1st day of May, 1990.

Order  
effecting  
recommen-  
dations

(4) Subject to any other Act, the Lieutenant Governor in Council may, upon the recommendation of the Minister, by order give effect to any recommendation of the joint committee.

## PART IV

### SARNIA HYDRO

Hydro  
commission

**26.—**(1) A hydro-electric power commission for the City is hereby established on the 1st day of January, 1991 and shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

R.S.O. 1980,  
cc. 423, 384

Composition  
of  
commission

(2) Despite section 41 of the *Public Utilities Act*, the hydro-electric power commission shall,

(a) during the pre-election period, be composed of,

(i) the members of the commission dissolved under subsection (5), and

(ii) the deputy mayor and reeve of the City; and

(b) after the pre-election period, be composed of,

(i) the mayor of the City, and

(ii) four other members who are qualified electors in the City under the *Municipal Elections Act* who shall be elected by a general vote of the electors of the City.

R.S.O. 1980,  
c. 308

Term of  
office

(3) A member of the commission shall hold office for the same term as the members of council or until the successor of the member is elected or appointed.

Delegate of  
mayor

(4) The council of the City may by by-law, passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Dissolution

(5) The Hydro-Electric Commission of the City of Sarnia is dissolved on the 1st day of January, 1991.

Transfer of  
assets,  
liabilities

(6) On the 1st day of January, 1991, the assets of the Town of Clearwater, the assets under the control and management of the commission dissolved under subsection (5) and the liabilities of the Town of Clearwater and of such commission

that relate to the distribution and supply of electrical power become assets under the control and management of and liabilities of the commission established under subsection (1), without compensation.

(7) On the 1st day of January, 1991, the commission established under subsection (1) shall acquire the retail distribution facilities within the Town of Clearwater used by Ontario Hydro on the 31st day of December, 1990 in the retail distribution of power, including equipment leased by Ontario Hydro to retail customers within the Town of Clearwater for the use of such power, and the price of the facilities shall be equal to the original cost of the facilities less the sum of the accumulated net retail equity of the customers supplied with power through the facilities and the accumulated depreciation associated with the facilities.

Purchase of  
retail  
distribution  
facilities from  
Ontario  
Hydro

(8) In subsection (7),

Definitions

“accumulated net retail equity” means the portion of the equity accumulated through debt retirement appropriations recorded for the rural power district relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for rural retail customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;

“retail distribution facilities” means works for the transmission and supply of power at voltages less than 50 kilovolts other than works located within a transformer station that transforms power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

(9) All by-laws and resolutions of the Town of Clearwater and of the commission dissolved under subsection (5) that relate to the distribution and supply of electrical power are continued as by-laws and resolutions of the commission established under subsection (1), and shall remain in force until the earlier of,

Continuation  
of by-laws,  
resolutions

(a) the date they are amended or repealed by the commission; or

(b) the 31st day of December, 1992.

(10) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the Town of

Certain  
by-laws,  
resolutions  
remain  
effective



Clearwater or by the commission dissolved under subsection (5).

## PART V

### POLICE

Boards of  
Commissioners of  
Police

**27.**—(1) On the 1st day of January, 1990, The Board of Commissioners of Police of the City of Sarnia and The Board of Commissioners of Police of the Town of Clearwater are amalgamated and the new board shall be deemed to be a board established under section 8 of the *Police Act*.

R.S.O. 1980,  
c. 381

Interim  
board

(2) Despite section 8 of the *Police Act*, from the 1st day of January, 1990 to the 30th day of November, 1991, inclusive, the board shall be composed of the members of the boards amalgamated under this section.

Composition  
of board

(3) On and after the 1st day of December, 1991, the board shall be composed of those members provided for under section 8 of the *Police Act*.

Temporary  
name

(4) During 1990, the board shall be called "The Board of Commissioners of Police of the City of Sarnia and the Town of Clearwater".

Police service

(5) During 1990, the board is responsible for providing police service for the City of Sarnia and the Town of Clearwater and, for the purpose of exercising its powers under any general or special Act, the City of Sarnia and the Town of Clearwater shall be deemed to be amalgamated as a city municipality.

Idem

(6) On and after the 1st day of January, 1991, the board is responsible for providing police service for the City.

Local board

**28.**—(1) During 1990, the board shall be deemed to be a local board of the City of Sarnia and not of the Town of Clearwater.

Rights  
protected

(2) Despite subsection (1), a resident or elector of the Town of Clearwater has the same rights and privileges as a resident or elector of the City of Sarnia relating to police matters.

Transfer to  
City

(3) On the 1st day of January, 1991, the board shall continue as the board of commissioners of police of the City and a local board of the City.

**29.**—(1) The board shall, in preparing its 1990 estimates under subsection 14 (2) of the *Police Act*, show separately the amount required to provide police service in the Town of Clearwater and in the City of Sarnia.

Estimates  
R.S.O. 1980,  
c. 381

(2) The amount of the estimates for providing police service in the Town of Clearwater shall be deemed to be a debt of the Town of Clearwater falling due in 1990 for the purposes of section 164 of the *Municipal Act*, and the Town of Clearwater shall pay this amount to the City of Sarnia no later than the 30th day of June, 1990.

Idem  
  
R.S.O. 1980,  
c. 302

(3) If there is a disagreement between the City of Sarnia and the Town of Clearwater on how the estimates are broken down under subsection (1), the City of Sarnia or the Town of Clearwater may refer the matter to the Ontario Police Commission and the decision of the Ontario Police Commission is final.

Disagree-  
ments

**30.** On the 1st day of January, 1990, the assets under the control and management of the boards amalgamated under subsection 27 (1) and all liabilities of such boards become assets under the control and management of and liabilities of the board, without compensation.

Transfer of  
assets,  
liabilities

**31.**—(1) On the 1st day of January, 1990, all by-laws and resolutions of the boards amalgamated under subsection 27 (1) are continued as by-laws and resolutions of the board and shall remain in force in the former municipality for which they were passed until the earlier of,

Continuation  
of by-laws,  
resolutions

(a) the date they are amended or repealed by the board; or

(b) the 31st day of December, 1990.

(2) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the boards amalgamated under subsection 27 (1).

Certain  
by-laws,  
resolutions  
remain  
effective

**32.** On and after the 1st day of January, 1991, the board and the members of the police force of the City shall have the same duties with respect to by-laws of the County as they do with respect to by-laws of the City.

Responsi-  
bility for  
County  
enforcement

**33.** Every person who is a member of the police force of the Town of Clearwater or of the police force of the City of Sarnia on the 1st day of July, 1989, and who continues to be a

Transfer of  
police  
personnel

member until the 31st day of December, 1989, becomes on the 1st day of January, 1990 a member of the police force created by the amalgamation under subsection 27 (1).

## PART VI

### BOUNDARY ADJUSTMENTS

Application  
of  
1981, c. 70

**34.**—(1) This Part applies to applications made to the Minister under section 2 of the *Municipal Boundary Negotiations Act, 1981*, that are being processed on the day this Part comes into force, and to future applications made under that section before the 1st day of January, 1991, to resolve an intermunicipal boundary issue or an intermunicipal boundary-related issue in the County.

Idem

(2) Subsection (1) does not apply to an issue involving a boundary of the County unless, in the opinion of the Minister, that issue is of a minor nature.

1981, c. 70  
does not  
apply

(3) Except as otherwise provided in this Part, the *Municipal Boundary Negotiations Act, 1981* does not apply to an application to which this Part applies.

Exception

(4) Sections 15 to 21 of the *Municipal Boundary Negotiations Act, 1981* apply with necessary modifications to an application to which this Part applies and to an order made under section 40.

Boundary  
application  
committee

**35.**—(1) The warden of County Council shall, within thirty days of this Part coming into force, appoint a boundary application committee.

Composition  
of committee

(2) The committee shall have five members consisting of,

(a) the warden;

(b) two members of County Council representing towns or villages; and

(c) two members of County Council representing townships.

Presiding  
officer

(3) The members of the committee shall appoint a presiding officer.

Guidelines

**36.** The committee shall establish guidelines for considering boundary applications in consultation with the Ministry of Municipal Affairs.



**37.—(1)** For each application to which this Part applies, the committee shall, having regard for the guidelines established under section 36, Duties of committee

- (a) determine and inquire into the issues raised by the application;
- (b) determine the party municipalities which have a substantial interest in the issues raised; and
- (c) obtain the opinion of the party municipalities and of any local board that the committee considers is affected by the application, on the issues raised by the application.

(2) Subject to subsections (4) and (5), the committee shall prepare and submit to County Council a report setting out, Idem

- (a) the issues;
- (b) the party municipalities in respect of each issue;
- (c) the extent of agreement or disagreement on the issues;
- (d) any agreement the party municipalities have reached on any of the issues;
- (e) the recommendations of the committee on how the issues raised by the application should be resolved; and
- (f) any other matters the committee considers appropriate.

(3) The committee may make recommendations under clause (2) (e) with respect to, Recommendations

- (a) the matters set out in paragraphs 1 to 24 of section 14 of the *Municipal Boundary Negotiations Act, 1981*; 1981, c. 70
- (b) the name of a local municipality; and
- (c) in the event the committee recommends an amalgamation, how the County Council votes of the mayors of the municipalities being amalgamated should be distributed to the local municipalities, other than the City, that would exist after such amalgamation.

Public  
meeting

(4) The committee shall, before preparing its report, hold at least one public meeting for the purpose of obtaining information, comments or opinions regarding the application.

Idem

(5) The committee shall, after preparing its report and before submitting it to County Council, hold at least one public meeting for the purpose of obtaining submissions and comments from the public in respect of the contents of the report.

Amendments  
to report

(6) The committee may amend its report after the public meeting required under subsection (5) and before submitting it to County Council.

Notice of  
meeting

(7) Notice of a public meeting required under subsection (4) or (5) shall be given at least fifteen days in advance of each meeting by publishing it in a newspaper having general circulation in the party municipalities.

County  
proposal

**38.**—(1) The County Council shall consider the report of the committee and shall, within sixty days after receiving the report and having regard to the guidelines established by the committee under section 36, submit to the Minister a proposal with respect to the resolution of the issues raised by the application.

Recommen-  
dations

(2) The proposal may contain recommendations with respect to the matters set out in subsection 37 (3).

Action by  
Minister

**39.** The Minister shall, within sixty days of receipt of the proposal,

- (a) submit to the Lieutenant Governor in Council a recommendation with respect to one or more of the matters set out in subsection 37 (3);
- (b) refer any issue back to County Council or the committee for further consideration;
- (c) terminate further consideration of the application;
- (d) refer any issue to the Municipal Board to hear any party municipality and, after a hearing, to make recommendations thereon; or
- (e) take such other action as the Minister considers appropriate.

Order

**40.** Upon receipt of the recommendation of the Minister, the Lieutenant Governor in Council may by order provide for one or more of the matters set out in subsection 37 (3).

## PART VII

## ASSUMPTION OF LOCAL POWERS BY THE COUNTY

**41.—**(1) In this Part, “local power” means a power that is conferred by any general or special Act on local municipalities or local boards thereof and that is prescribed by the Minister. Local power

(2) The County Council may pass by-laws to assume any local power for all of the local municipalities. Assumption of local power

(3) No by-law under subsection (2) shall be passed or repealed unless, Double majority vote

(a) a majority of all the votes on County Council are cast in its favour; and

(b) members of County Council representing a majority of the local municipalities cast their votes in its favour.

(4) For the purpose of clause (3) (b), the members of County Council representing the City shall only be considered to have cast their votes in favour of a by-law if at least three of the City representatives cast their votes in its favour. Idem

(5) When a by-law passed under subsection (2) comes into effect, Effect of by-law

(a) the County is responsible for the local powers assumed by the County in all of the local municipalities;

(b) the County has the powers conferred by any general or special Act upon the local municipalities or local boards thereof related to the local powers assumed by the County;

(c) no local municipality shall exercise the local powers assumed by the County and any by-law or other measure of a local municipality under that power is of no effect; and

(d) no local municipality shall provide any service or facility under the local power assumed by the County within the County without the consent of County Council, which consent may be given upon such conditions, including the payment of compensation, as may be agreed upon.



Appeal to  
O.M.B.

(6) If consent is refused under clause (5) (d) or the council of the local municipality and the County Council fail to agree on the conditions related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter.

Decision of  
Board final

(7) The Municipal Board may impose such conditions as it considers appropriate and the decision of the Municipal Board is final.

No further  
appeal  
R.S.O. 1980,  
c. 347

(8) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (7).

Transfer of  
rights, obliga-  
tions, etc.

**42.**—(1) All rights, obligations, assets and liabilities of a local municipality or local board thereof pertaining to the local powers assumed by the County are vested in the County and financial adjustments, calculated in accordance with such criteria as may be prescribed, shall be made between the County and the local municipalities or local boards thereof.

Assumption  
by County of  
debt

(2) The County shall pay to the local municipality or local board thereof on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of that local municipality or local board in respect of the local powers assumed by the County.

Interest

(3) If the County fails to make any payment required under subsection (2) on or before the due date, the local municipality or local board may charge the County interest at the rate of 15 per cent per annum, or such lower rate as the local municipality or local board determines, from the due date until payment is made.

Agreements

**43.**—(1) If a local municipality or local board thereof had entered into an agreement with any municipality or other person in respect of the local power assumed by the County, the County shall be bound by and entitled to the benefit of the agreement and the local municipality or local board thereof is relieved of all liability under the agreement.

Idem

(2) The County Council may enter into agreements with any municipality or other person for establishing, constructing, operating or managing any service or facility that is within the jurisdiction of the County Council as a result of the passage of the by-law under subsection 41 (2).

Rates  
R.S.O. 1980,  
c. 302

**44.**—(1) Despite sections 368 and 368e of the *Municipal Act*, the County Council may by by-law provide for imposing on and collecting from the local municipalities for which it is providing services or facilities under the assumed local powers

a rate sufficient to pay the whole, or such portion as the by-law may specify, of the expenditures and capital costs including debenture charges related to the services or facilities and such rate may vary on any basis the County Council considers appropriate and specifies in the by-law.

(2) All rates under subsection (1) constitute a debt of the local municipality to the County and are payable at such times and in such amounts as may be specified by by-law of the County Council. Idem

(3) Despite sections 368 and 368e of the *Municipal Act*, a local municipality may, Collection of rates  
R.S.O. 1980,  
c. 302

- (a) pay the whole or part of the amount chargeable to it under this section out of its general funds;
- (b) pass by-laws for collecting the whole or part of the amount chargeable to it under this section in the same manner as that local municipality could have collected the amount if the local power had not been assumed by the County; and
- (c) include the whole or any part of an amount chargeable to it under this section as part of the cost of an urban service within an urban service area established in the local municipality under any general or special Act.

**45.—**(1) When a by-law under subsection 41 (2) is repealed, Repeal of  
by-law

- (a) the local powers assumed by the County revert to the local municipalities and local boards thereof as they exist on the day the by-law is repealed;
- (b) all rights, obligations, assets and liabilities of the County or local board thereof pertaining to the local powers are vested in the local municipalities or local boards thereof;
- (c) financial adjustments, calculated in accordance with such criteria as may be prescribed, shall be made between the County or local board thereof and the local municipalities or local boards thereof; and
- (d) the local municipalities or local boards thereof shall pay to the County or local board thereof on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of

the County or local board thereof in respect of the local powers reverting to the local municipalities or local boards thereof.

**Interest**

(2) If the local municipalities or local boards thereof fail to make any payment required under clause (1) (d) on or before the due date, the County or local board thereof may charge the local municipalities or local boards thereof interest at the rate of 15 per cent per annum, or such lower rate as the County or local board thereof determines, from the due date until payment is made.

**Agreements**

(3) If the County or local board thereof had entered into an agreement with any municipality or other person in respect of the local power reverting to the local municipalities or local boards thereof, the local municipalities or local boards thereof are bound by the agreement and the County or local board thereof is relieved of all liability under the agreement.

**Disputes**

**46.**—(1) If a dispute arises in respect of the financial adjustments or the vesting of assets and liabilities under subsection 42 (1) or clause 45 (1) (b), or the transfer of agreements under subsection 43 (1) or subsection 45 (3), the County, local municipality or local board affected may apply to the Municipal Board for a resolution of the dispute and the Municipal Board shall hear and determine the matter and its decision is final.

R.S.O. 1980,  
c. 347, s. 94  
does not  
apply

(2) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (1).

**Regulations**

**47.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) providing for the security of employment, the protection of benefits, including seniority and pensions, and early retirement options for employees affected by by-laws passed or repealed under this section;
- (b) prescribing the criteria for determining the amount of and the manner of payment of the financial adjustments under subsections 42 (2) and 45 (1) and for providing which body shall pay and which body shall receive the payments made under those subsections.

Minister's  
order

(2) The Minister may by order prescribe the local powers to which this Part applies.



PART VIII

WASTE DISPOSAL

**48.** In this Part, “waste” means garbage, refuse, domestic waste, industrial solid waste or municipal refuse and such other waste as may be designated by by-law of the County Council.

Definition

**49.—**(1) On and after the 1st day of January, 1991, the County shall provide facilities for receiving, dumping and disposing of waste and no local municipality or local board thereof shall provide such facilities.

County waste facilities

(2) For the purposes of subsection (1), the County Council has the powers conferred by any general or special Act upon the local municipalities and local boards thereof for the receiving, dumping and disposing of waste.

County powers

(3) The County Council may, for each local municipality, designate one or more facilities for the receiving, dumping and disposing of waste or any class thereof.

Designated facilities

(4) If a designation has been made, a local municipality shall not utilize any facilities except the facilities that have been designated for that local municipality.

Idem

**50.—**(1) No facilities for the receiving, dumping and disposing of waste shall be provided in the County by any municipality or other person without the consent of the County Council, which consent may be given upon such terms, including the payment of compensation, as may be agreed upon.

Waste disposal, County responsibility

(2) Subsection (1) does not apply to prevent any person or any municipality which does not form part of the County for municipal purposes from providing facilities for the receiving, dumping and disposing of waste if such facilities were being lawfully provided on the 1st day of January, 1991, so long as that facility continues to operate without interruption.

Existing facilities

(3) If the County Council refuses its consent under subsection (1) or the applicant and the County Council fail to agree on the terms related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter and may impose such conditions as the Board considers appropriate.

Disagreements to O. M. B.

(4) The decision of the Municipal Board is final.

Decision final

R.S.O. 1980,  
c. 347, s. 94  
does not  
apply

(5) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (3).

Agreements

**51.** The County Council may enter into agreements with any municipality or other person for establishing, constructing, operating or managing, facilities for the receiving, dumping and disposing of waste.

Adoption of  
certain  
provisions

**52.** Section 42, subsection 43 (1), section 44 and clause 47 (1) (b) apply with necessary modifications to the powers granted to the County under this Part to provide facilities for receiving, dumping and disposing of waste.

Disputes

**53.** If a dispute arises in respect of the financial adjustments or the vesting of assets and liabilities, or the transfer of agreements under this Part, the board of arbitrators established under section 80 has the power to hear and determine the matter.

## PART IX

### COUNTY ROAD SYSTEM

County roads

**54.** On and after the 1st day of January, 1991, all roads under the jurisdiction and control of the County shall continue to form part of the county road system together with,

- (a) the roads that on the 31st day of December, 1990 are under the jurisdiction and control of the Sarnia Suburban Roads Commission;
- (b) the roads within the City prescribed by the Minister; and
- (c) the roads that on the 31st day of December, 1990 are covered by an agreement under section 58 of the *Public Transportation and Highway Improvement Act*.

R.S.O. 1980,  
c. 421

Dissolution  
of roads  
commission

**55.—**(1) The Sarnia Suburban Roads Commission is dissolved on the 1st day of January, 1991 and the assets and liabilities of the commission are transferred to the County on that date.

Transfer of  
benefits,  
liabilities

(2) The County has, in respect of the roads included in the county road system, all the rights, powers and benefits conferred and is subject to all liabilities imposed by statute, by-law, contract or otherwise upon the Sarnia Suburban Roads Commission.

**56.**—(1) Despite subsections 270 (1), (2) and (4) of the *Municipal Act*, the County Council may by by-law assume as a county road any highway within a local municipality.

Assumption  
of highways  
by County  
R.S.O. 1980,  
c. 302

(2) A by-law passed under subsection (1) does not take effect until assented to by the council of the local municipality.

Consent  
required

(3) The County Council may by by-law assume as a county road any highway in a local municipality that connects with a county road.

Connecting  
roads

**57.**—(1) Sections 58 and 59 of the *Public Transportation and Highway Improvement Act* do not apply to the County or the local municipalities.

R.S.O. 1980,  
c. 421, ss.  
58, 59 do  
not apply

(2) All existing agreements between the County and a local municipality under section 58 of the *Public Transportation and Highway Improvement Act* are terminated on the 1st day of January, 1991.

Existing  
agreements  
R.S.O. 1980,  
c. 421

**58.**—(1) Despite subsections 278 (1) and (2) of the *Municipal Act*, a bridge that, on the 31st day of December, 1990, is under the exclusive or joint jurisdiction and control of County Council is on the 1st day of January, 1991 transferred to and vested in the council of the local municipality that has jurisdiction over the highway on which the bridge is situate.

Bridges  
R.S.O. 1980,  
c. 302

(2) Subsection (1) does not apply to bridges,

Limitation

(a) on county roads;

(b) on a boundary line between local municipalities; or

(c) on a county boundary line.

**59.** The Minister may by order prescribe the roads within the City which are county roads.

Minister's  
order

## PART X

### HEALTH AND SOCIAL SERVICES

**60.**—(1) On and after the 1st day of January, 1991, the Lambton Health Unit shall be composed of,

Lambton  
Health Unit

(a) not more than six members appointed from and by the County Council; and



- (b) not more than two persons appointed by the Lieutenant Governor in Council upon the recommendation of the Minister of Health.

County  
responsible  
for expenses  
1983, c. 10

(2) Despite any other Act, the expenses incurred by the Lambton Health Unit in establishing and maintaining the health unit and performing its functions under the *Health Protection and Promotion Act, 1983* or any other Act shall be paid by the County.

County  
responsible  
under  
R.S.O. 1980,  
c. 188

**61.** For the purposes of the *General Welfare Assistance Act*, no local municipality shall be deemed to be a municipality and the County shall have sole responsibility as a County for all matters provided for in that Act.

Homes for  
the aged

**62.**—(1) The homes for the aged known as Twilight Haven, North Lambton and Marshall Gowland, and all assets and liabilities thereof, vest solely in the County on and after the 1st day of January, 1991.

No local  
municipality  
has authority  
under  
R.S.O. 1980,  
c. 203  
Costs

(2) No local municipality has authority to establish, erect or maintain a home for the aged under the *Homes for the Aged and Rest Homes Act*.

R.S.O. 1980,  
c. 302

(3) The costs of operating and maintaining Twilight Haven, North Lambton and Marshall Gowland shall form part of the levy under section 164 of the *Municipal Act*.

1984, c. 55  
does not  
apply to local  
municipality

**63.** No local municipality shall be deemed to be a municipality for the purposes of the *Child and Family Services Act, 1984*.

Information  
to be  
provided to  
County

**64.** Every local municipality and every officer or employee thereof shall, at the request of the officers of the County who are responsible for the administration of the Acts referred to in this Part, furnish to the County officers any information they may require for the purposes of this Act.

## PART XI

### PUBLIC LIBRARIES

County  
library board

**65.**—(1) A county library board for the entire County to be known as "The Lambton County Library Board" is hereby established on the 1st day of January, 1991 and shall be deemed to be a county library board established under Part I of the *Public Libraries Act, 1984*.

1984, c. 57

(2) Subsection 9 (6) of the *Public Libraries Act, 1984* does not apply in the County.

1984, c. 57,  
s. 9 (6)  
does not  
apply

(3) All local municipalities shall be deemed to be participating municipalities for the purposes of subsection 26 (1) of the *Public Libraries Act, 1984*.

Apportion-  
ment of  
county levy

(4) All library boards of the County, local municipalities and former municipalities are dissolved on the 1st day of January, 1991 and their assets and liabilities are transferred to the county library board established under subsection (1), without compensation.

Transfer of  
assets,  
liabilities to  
county  
library board

(5) All by-laws, rules, regulations and fees passed or established by the boards dissolved under subsection (4) are continued as by-laws, rules, regulations and fees of the county library board and shall remain in force until the earlier of,

Continuation  
of by-laws,  
etc.

(a) the date they are amended or repealed by the board; or

(b) the 31st day of December, 1992.

(6) Nothing in this section repeals or authorizes the amendment or repeal of by-laws conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by a board dissolved under subsection (4).

Certain  
by-laws  
continued

**66.** The County shall pay to each local municipality, on or before the due date, all amounts of principal and interest becoming due upon any outstanding debt of each local municipality in respect of public libraries and, if the County fails to pay the amounts before the due date, the local municipality may charge the County interest at the annual rate of 15 per cent, or such lower rate as the local municipality determines, from the due date until payment is made.

Debt  
transferred to  
County

**67.** Every person who was an employee of a board dissolved under this Part on the 1st day of July, 1990, and continues to be employed until the 31st day of December, 1990, becomes, on the 1st day of January, 1991, an employee of the county library board.

Transfer of  
employees

## PART XII

### FINANCES

**68.** In this Part,

Definitions

R.S.O. 1980,  
c. 31

“average municipal commercial mill rate” means, in respect of a local municipality, the rate obtained by dividing the total of taxes levied for all purposes, other than for school purposes and other than under sections 32 and 33 of the *Assessment Act*, on the commercial assessment for the preceding year by the total commercial assessment for the preceding year and multiplying the result by 1,000;

R.S.O. 1980,  
c. 359

“commercial assessment” means commercial assessment as defined in clause 1 (1) (b) of the *Ontario Unconditional Grants Act*;

“discounted assessment” means, for a local municipality or for a merged area, the sum of,

- (a) the product obtained by multiplying the residential and farm assessment for that local municipality or that merged area by 0.5131, and
- (b) the commercial assessment for that local municipality or that merged area;

“discounted equalized assessment” means, for each local municipality, the sum of the discounted assessment and the equivalent assessment of that local municipality divided by its prescribed equalization factor and multiplied by 100;

“discounted equalized assessment for each merged area” means the discounted assessment of the merged area divided by its prescribed equalization factor and multiplied by 100;

R.S.O. 1980,  
c. 302

“equivalent assessment” means, for a local municipality, that portion of its payments in lieu of taxes in the preceding year, as defined in clause 365 (1) (j) of the *Municipal Act*, not allocated for school purposes, divided by the average municipal commercial mill rate and multiplying the result by 1,000;

“merged area” means the area of the City of Sarnia or the area of the Town of Clearwater;

“net county levy” means the amount required for County purposes under subsection 365 (6) of the *Municipal Act* including the sums required for any board, commission or other body, apportioned to each local municipality by the County;

“net lower tier levy” means the amount required for the purposes of a local municipality under section 164 of the



*Municipal Act* including the sums required for any board, commission or other body, but excluding amounts required to be raised for County and school purposes or for a special rate imposed under section 79; R.S.O. 1980, c. 302

“residential and farm assessment” means residential and farm assessment as defined in clause 7 (1) (e) of the *Ontario Unconditional Grants Act*. R.S.O. 1980, c. 359

**69.**—(1) For purposes of apportioning the net county levy or the net lower tier levy among the respective merged areas, the Minister may, in each year, prescribe the equalization factor to apply for that year to each local municipality within the County and each merged area. Prescribed equalization factor

(2) Despite subsection 365 (6) of the *Municipal Act*, the treasurer of the County shall determine, Annual County apportionment

- (a) the discounted equalized assessment of each local municipality in the County;
- (b) the discounted equalized assessment of the County; and
- (c) the percentage share of apportionment, correct to three decimal places, for each local municipality by dividing the discounted equalized assessment for each local municipality by the discounted equalized assessment of the County and multiplying the result by 100.

**70.**—(1) In each year, the Ministry of Municipal Affairs shall calculate and notify the City of the discounted equalized assessment for each merged area. Annual merged area apportionment

(2) Despite subsection 7 (2) of the *Ontario Unconditional Grants Act*, the net county levy and the net lower tier levy of the City shall be levied against the whole rateable property, including business assessment thereon, of the City and apportioned between the merged areas of the City in the proportion that the discounted equalized assessment for each merged area bears to the total discounted equalized assessment of both merged areas. How levies apportioned  
R.S.O. 1980, c. 359

(3) The rates to be levied in each merged area of the City shall be determined in accordance with subsection 7 (3) of the *Ontario Unconditional Grants Act*. Determination of rates

**71.**—(1) Despite section 70, the council of the City may by by-law in any year, before the adoption of the estimates for Interim levy

that year, levy in each of the merged areas, on the whole of the assessment for real property, including business assessment in the merged area, according to the last returned assessment roll, a sum not exceeding 50 per cent of that which would be produced by applying to such assessment the total rate for all purposes levied in the merged area in the preceding year on residential real property of public school supporters.

Adjustments (2) The amount of any levy under subsection (1) shall be deducted from the amount of the levy made under subsection 70 (2).

Application of R.S.O. 1980, c. 302, s. 159 (5) (3) Subsection 159 (5) of the *Municipal Act* applies to levies made under subsection (1).

Merged areas under R.S.O. 1980, c. 129

**72.**—(1) For the purposes of levying taxes under Part IV of the *Education Act*, the merged areas shall be deemed to be municipalities, and the council of the City shall be deemed to be the council of each merged area.

Regulations (2) The Lieutenant Governor in Council may each year make regulations providing for the apportionment of the sums required by the Lambton County Board of Education and The Lambton County Roman Catholic Separate School Board with respect to any local municipality or merged area or parts thereof that are wholly or partly within their area of jurisdiction.

Where county-wide assessment R.S.O. 1980, c. 302

**73.** Sections 69, 70, 71 and 72 of this Part and sections 365, 366 and 368 of the *Municipal Act* cease to apply to the County and the local municipalities if the County has been subject to an assessment update under section 368b of the *Municipal Act*.

Direction of Minister of Revenue

**74.**—(1) Despite subsections 368b (3) and (3a) of the *Municipal Act*, in 1991, for the purposes of taxation in 1992, the Minister of Revenue shall make a direction under subsection 368b (2) of the *Municipal Act* for changes to be made to the assessment rolls of the local municipalities.

Grants

(2) If the Minister is of the opinion that taxes for school purposes in a local municipality may be unduly increased because of changes made to the assessment rolls of local municipalities as a result of a direction under subsection (1), the Minister may make a grant to the local municipality under such terms as the Minister considers necessary in the circumstances.

(3) If, in any year, a local municipality receives a grant under subsection (2), the local municipality shall, in that year, use the grant to reduce the increases in the amounts the local municipality is required to levy for school purposes.

Grant to be  
used to  
reduce  
increases

(4) Nothing in this Part prevents or restricts a local municipality from passing by-laws under section 362 or 363 of the *Municipal Act*.

Certain  
by-laws not  
affected  
R.S.O. 1980,  
c. 302

**75.**—(1) In 1991, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall not be increased over the 1990 rates by more than the lesser of,

1991 City  
rates

- (a) 3.5 per cent of the rates of taxation for general purposes in the Town of Clearwater in 1990; and
- (b) the rate of inflation for the calendar year of 1990, as determined by the Consumer Price Index published by Statistics Canada.

(2) In 1992, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall limit the aggregate levy for general purposes upon the merged area to the lesser of,

1992 City  
rates

- (a) 103.5 per cent of the dollar amount levied for general purposes in the merged area of the Town of Clearwater in 1991; and
- (b) 100 per cent plus the rate of inflation for the calendar year of 1991, as determined by the Consumer Price Index published by Statistics Canada, of the dollar amount levied for general purposes in the merged area of the Town of Clearwater in 1991.

(3) In 1993, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall not be increased over the 1992 rates by more than the lesser of,

1993 City  
rates



- (a) 3.5 per cent of the rates of taxation for general purposes in the merged area of the Town of Clearwater in 1992; and
- (b) the rate of inflation for the calendar year of 1992, as determined by the Consumer Price Index published by Statistics Canada.

Rates,  
subsequent  
years

(4) In 1994, 1995, 1996, 1997, 1998, 1999 and 2000, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which are different from the rates which would have been levied for such purposes but for this subsection.

Where taxes  
reduced

(5) If the Minister has made an order under this section which results in a reduction in the taxes which would have otherwise been levied in any year, the amount of the reduction shall be charged to the general funds of the City in that year.

Adjustments  
of grant total

R.S.O. 1980,  
c. 359

**76.**—(1) The Minister may by order on such conditions as the Minister considers appropriate provide for payments to be made to the City so that in each of the years 1991, 1992 and 1993 the total of all grants received by the City under the *Ontario Unconditional Grants Act* pertaining to the merged area of the Town of Clearwater and payments under this subsection is not less than the total of all grants received by the Town of Clearwater under the *Ontario Unconditional Grants Act* in 1990.

Minister's  
order

(2) The Minister may by order before the 1st day of January, 2000, on such conditions as the Minister considers appropriate, make grants or loans to the County and the local municipalities to achieve the purposes of this Act.

Appropri-  
ations

**77.** The money required for the purposes of this Act shall be paid out of the money appropriated therefor by the Legislature.

Adjustments  
of grants  
under  
R.S.O. 1980,  
c. 359

**78.**—(1) A grant under the *Ontario Unconditional Grants Act* to the County or a local municipality in any year in which an incorporation, a major boundary change or a major change in responsibility for the delivery of any service took place during that year shall be revised to reflect the incorporation, the boundary change or the change in the delivery of services.

(2) If, in any year, there is an overpayment or underpayment of grants paid to the County or a local municipality as a result of a revision under subsection (1), the Minister shall adjust any grant paid to the County or a local municipality in the immediately following year by the amount of the overpayment or underpayment.

Adjustment  
of grants by  
Minister

**79.—(1)** In this section,

Definitions

“urban service” means a service of the City not being provided generally throughout the City or not benefiting lands in the City equally, and includes any liability incurred by a former municipality with respect to such service;

“urban service area” means the area or rateable property, including the business assessment thereon, designated in a by-law under clause (2) (c) or in an order under clause (5) (c).

(2) The council of the City may, with the approval of the Municipal Board, by by-law,

By-laws  
respecting  
urban  
services

- (a) identify an urban service;
- (b) define which costs of the City are related to that urban service;
- (c) designate upon what area or rateable property, including the business assessment thereon, of the City the related costs should be raised; and
- (d) levy a special rate on that area or rateable property, including the business assessment thereon, to raise the whole or part of the related costs.

(3) The rates to be levied within each urban service area shall be determined in accordance with subsection 7 (3) of the *Ontario Unconditional Grants Act*.

Determi-  
nation of  
rates  
R.S.O. 1980,  
c. 359

(4) The council of the City may establish, amend or dissolve any number of urban service areas designated under subsection (2).

Dissolution  
of urban  
service areas

(5) Before the 1st day of January, 1991, the Minister, upon the joint application of the councils of the City of Sarnia and the Town of Clearwater, may make an order to be effective no earlier than the 1st day of January, 1991, that,

Minister's  
order

- (a) identifies an urban service;

(b) defines which costs of the City will relate to that urban service; and

(c) designates upon what area or rateable property, including business assessment thereon, of the City the related costs shall be raised.

Where  
O.M.B.  
approval not  
required

(6) Where an order under subsection (5) creating an urban service area is in force and has not been amended under subsection (7), the council of the City may pass a by-law under clause (2) (d) related to that urban service area without the approval of the Municipal Board.

Amendments  
or repeal of  
order by City

(7) The council of the City may, with the approval of the Municipal Board, by by-law amend or repeal an order under subsection (5).

## PART XIII

### MISCELLANEOUS

Board of  
arbitrators

**80.**—(1) The Minister shall appoint three persons as a board of arbitrators to make adjustments of assets and liabilities arising from any amalgamation, dissolution, other than the dissolution of a police village, and transfer of functions or services under Parts I, II, V, VIII, IX, X, XI and this Part.

Certain  
provisions of  
R.S.O. 1980,  
c. 25 apply

(2) Sections 3 to 5, 7, 9 to 11 and 13 to 15 of the *Arbitrations Act* and the Schedule to that Act apply to an arbitration under this section.

Decisions of  
board  
binding

(3) The decisions of the board of arbitrators are binding on the County, local municipalities and local boards and are not subject to appeal.

Hearing

(4) The board of arbitrators shall hold a hearing with respect to any matter set out in subsection (1) that is in dispute.

Industrial  
sites  
R.S.O. 1980,  
c. 302

**81.** Paragraph 50 of section 210 of the *Municipal Act* applies with necessary modifications to the County.

By-laws  
respecting  
emergency  
measures

**82.**—(1) If there is a conflict between a by-law passed by County Council under subclause 209 (b) (ii) or (iii) of the *Municipal Act* and a by-law passed by the council of a local municipality under those subclauses, the by-law of County Council prevails to the extent of the conflict.



(2) When a by-law passed by County Council under sub-clause 209 (b) (ii) of the *Municipal Act* is in force, the County may pass by-laws, Idem  
R.S.O. 1980,  
c. 302

- (a) with the consent of the local municipality or local board concerned, for appointing heads of departments and alternates to be members of or advisors to the emergency measures planning committee or any subcommittee thereof;
- (b) with the consent of the local municipality or local board concerned, for training employees of the local municipality or local board in their emergency functions;
- (c) for appointing members of the emergency measures planning committee or of any subcommittee thereof to be in charge of the departments or utilities throughout the County, as provided in the by-law, when an emergency occurs;
- (d) for acquiring alternative headquarters for the County Government outside the County; and
- (e) for obtaining and distributing emergency materials, equipment and supplies.

(3) The County shall be deemed to be a regional municipality and the local municipalities shall be deemed to be area municipalities of that regional municipality for the purposes of the *Emergency Plans Act, 1983*. Deeming  
provision  
respecting  
1983, c. 30

**83.** The County Council, before the 31st day of December, 1992, shall prepare, adopt and forward to the Minister for approval an amendment to the official plan of the County to cover the area of the former municipality of The Corporation of the City of Sarnia. Amendment  
to official  
plan

**84.—(1)** The County Council shall not request an amendment to this Act unless, Double  
majority vote

- (a) a majority of all the votes on County Council are cast in favour of the request; and
- (b) members of County Council representing a majority of the local municipalities cast their votes in favour of the request.

(2) For the purposes of clause (1) (b), subsection 41 (4) applies with necessary modifications. Idem

Regulations  
respecting  
employees

**85.**—(1) The Lieutenant Governor in Council may, upon the recommendation of the Minister, make regulations providing for the security of employment, the protection of benefits, including seniority and pensions, and early retirement options for employees affected by this Act.

Limitation

(2) Subsection (1) does not apply to employees affected by a by-law passed or repealed under Part VII.

Repeal of  
ss. 4 and 18

**86.** Sections 4 and 18 of this Act are repealed on the 1st day of December, 1991.

Repeals

**87.** *The City of Sarnia Act, 1925*, being chapter 103, *The City of Sarnia Act, 1977*, being chapter 101 and the *County of Lambton Act, 1981*, being chapter 92, are repealed on the 1st day of January, 1991.

Commence-  
ment

**88.**—(1) This Act, except sections 5, 6, 7, 13, 19, 20 and 21, Parts IX and X and section 87, comes into force on the day it receives Royal Assent.

Idem

(2) Sections 5 and 13, Parts IX and X and section 87 come into force on the 1st day of January, 1991.

Idem

(3) Sections 6, 7, 19, 20 and 21 come into force on the 1st day of December, 1991.

Transition,  
regular  
elections  
R.S.O. 1980,  
c. 308

(4) Despite subsection (3), the regular elections to be held in 1991 under the *Municipal Elections Act* in the area municipalities shall be conducted as if sections 6, 7 and 19 were in force.

Short title

**89.** The short title of this Act is the *Sarnia-Lambton Act, 1989*.

## SCHEDULE

### WARD 1

Beginning at the intersection of the southerly boundary of the Town of Clearwater and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of the Blackwell Sideroad and the northerly prolongation thereof to a point distant 500 metres measured northerly from the southerly high water mark of Lake Huron;

Thence easterly and parallel with the southerly high water mark of the said Lake to the easterly boundary of the Town of Clearwater;

Thence southerly along the easterly boundary of the said Town to the south easterly angle of the said Town;

Thence westerly along the southerly boundary of the said Town to the place of beginning.

## WARD 2

Beginning at the intersection of the centre line of the King's Highway No. 402 and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of Blackwell Sideroad and the northerly prolongation thereof to a point distant 500 metres measured northerly from the southerly high water mark of Lake Huron;

Thence westerly and parallel with the southerly high water mark of the said Lake to the International Boundary between the Province of Ontario and the United States of America;

Thence southerly along the said International Boundary to the northerly boundary of the Village of Point Edward;

Thence easterly and southerly along the northerly and easterly boundaries of the said Village to the centre line of Michigan Avenue;

Thence easterly along the centre line of Michigan Avenue to the centre line of Indian Road North;

Thence southerly along the centre line of Indian Road North to the centre line of the King's Highway No. 402;

Thence easterly along the centre line of the said King's Highway to the place of beginning.

## WARD 3

Beginning at the intersection of the westerly boundary of the City of Sarnia and the centre line of Michigan Avenue;

Thence easterly along the centre line of Michigan Avenue to the centre line of Indian Road North;

Thence southerly along the centre line of Indian Road North to the centre line of the King's Highway No. 402;

Thence easterly along the centre line of the said King's Highway to the centre line of the Blackwell Sideroad;

Thence southerly along the centre line of the Blackwell Sideroad to the northerly limit of Concession V of the former Township of Sarnia;

Thence westerly along the northerly limit of the said Concession to the easterly limit of the King's Highway No. 40;

Thence westerly to and along the centre line of Wellington Street to the centre line of Indian Road South;

Thence northerly along the centre line of Indian Road South to the centre line of London Road;

Thence westerly along the centre line of London Road and the westerly prolongation thereof to the International Boundary between the Province of Ontario and the United States of America;



Thence northerly along the said International Boundary to the southerly boundary of the Village of Point Edward;

Thence easterly and northerly following the boundaries between the Village of Point Edward and the City of Sarnia to the place of beginning.

#### WARD 4

Beginning at the intersection of the southerly boundary of the Town of Clearwater and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of the Blackwell Sideroad to the northerly limit of Concession V of the former Township of Sarnia;

Thence westerly along the northerly limit of the said Concession to the easterly limit of the King's Highway No. 40;

Thence westerly to and along the centre line of Wellington Street to the centre line of Indian Road South;

Thence northerly along the centre line of Indian Road South to the centre line of London Road;

Thence westerly along the centre line of London Road and the westerly prolongation thereof to the International Boundary between the Province of Ontario and the United States of America;

Thence southerly along the said International Boundary to the southerly boundary of the City of Sarnia;

Thence easterly along the southerly boundary of the City of Sarnia and the Town of Clearwater to the place of beginning.

## CHAPTER 42

### **An Act to amend the Assessment Act**

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Clause 7 (1) (a) of the *Assessment Act*, being chapter 31 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1986, chapter 69, section 3, is repealed and the following substituted therefor:**

- (a) The business of a distiller for a sum equal to,
  - (i) for the 1989 taxation year, 100 per cent of the assessed value of the land so occupied or used, exclusive of the portion of the land occupied or used for the distilling of alcohol solely for industrial purposes, and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion, and
  - (ii) for the 1990 and subsequent taxation years, 75 per cent of the assessed value of the land so occupied or used.

**2. In each of the years 1989, 1990 and 1991, the Minister of Municipal Affairs may make grants, upon such terms and conditions as the Minister considers necessary, to any municipality to compensate the municipality for a loss of tax revenue resulting from the reduction in the rate of business assessment provided by clause 7 (1) (a) of the *Assessment Act*, as re-enacted by section 1 of this Act.**

Grants by  
Minister of  
Municipal  
Affairs

**3. In addition to any grants that may have been paid pursuant to section 2, in each of the years 1992, 1993 and 1994, the Minister of Municipal Affairs may, where the Minister considers that the loss of revenue has been sufficiently significant, make further grants, upon such terms and conditions as the Minister considers necessary, to any municipality to further compensate the municipality for a loss in revenue resulting from the reduction in the rate of business assessment provided**

Additional  
grants

by clause 7 (1) (a) of the *Assessment Act*, as re-enacted by section 1 of this Act.

**4.—(1)** Subsection 57 (1) of the said Act is amended by inserting after “municipality” in the second line “or school board”.

**(2)** Section 57 of the said Act is amended by adding thereto the following subsections:

Exception

(3) Despite subsection (1), upon the request of a person assessed under this Act, an assessor may provide sufficient information on similar real property in the vicinity, other than actual income and expense information on individual properties, to enable the person to determine the fairness of that person’s assessment.

Idem

(4) Despite subsection (1), the assessment commissioner shall make available to all municipalities and school boards within the assessment region for which the assessment commissioner is appointed, information sufficient to enable them to meet their planning requirements other than actual income and expense information on individual properties.

Commence-  
ment

**5.** This Act shall be deemed to have come into force on the 1st day of December, 1988.

Short title

**6.** The short title of this Act is the *Assessment Amendment Act, 1989*.



## CHAPTER 43

### An Act to amend the Municipal Act

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. The *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:**

**209a.—(1)** In this section,

Definitions

“municipality” means a municipality as defined in the *Municipal Affairs Act*, and a metropolitan, regional or district municipality and the County of Oxford or a local board of a metropolitan, regional or district municipality or of the County of Oxford;

R.S.O. 1980,  
c. 303

“participating local municipality” means a local municipality to which a by-law passed under subsection (2) applies;

“waste” means ashes, garbage, refuse, domestic waste, industrial solid waste or municipal refuse and such other wastes as may be designated by by-law passed by the council of a county;

“waste management plan” means a document adopted by the council of a county containing objectives and policies related to waste management powers and which may contain a description of the measures and procedures proposed to attain the objectives of the plan;

“waste management power” means any power conferred by any general or special Act on local municipalities or local boards thereof related to the collection, removal, disposal, treatment, storage, processing, transfer, reduction, reuse, recovery or recycling of waste.

(2) The council of a county may pass a by-law to empower it to adopt a waste management plan or to assume any or all of the waste management powers, or both, for all the local

Waste  
management  
plan and  
waste  
management  
powers

municipalities forming part of the county for municipal purposes.

Exemption

(3) The council of a county may, with the consent of the council of the local municipality, by by-law exempt that local municipality from a by-law under subsection (2) but the consent is not required in respect of a repeal of the by-law.

Voting  
requirements  
for approval

(4) No by-law under subsection (2) or (3) may be passed or repealed unless,

- (a) at least two-thirds of all the votes on county council are cast in its favour; and
- (b) at least one vote is cast in its favour by the majority of the local municipalities forming part of the county for municipal purposes.

Preparation  
of plan

(5) The council of a county may provide for the preparation and adoption of a waste management plan for which it has passed a by-law under subsection (2) but no plan shall be adopted until notice of the proposed plan containing such information as may be prescribed is given in the manner and to the persons and agencies prescribed.

Conformity  
to plan

(6) If a waste management plan is in effect, the county or local board thereof or the participating local municipalities or local boards thereof shall not undertake any waste management service or facility or pass a by-law for any purpose under a waste management power that does not generally conform to the plan.

Non-  
conforming  
undertakings,  
preliminary  
steps  
permitted

(7) Notwithstanding subsection (6), the county or local board thereof or the participating local municipalities or local boards thereof may consider the undertaking of a waste management service or facility that does not conform with the waste management plan and for that purpose may apply for any approval that may be required, carry out investigations, obtain any reports or take other preliminary steps incidental to and reasonably necessary for the undertaking of the work.

Limitation

(8) Nothing in subsection (7) authorizes the actual undertaking of any waste management service or facility that does not conform with a waste management plan.

Effect of  
by-law

(9) When a by-law passed under subsection (2) comes into effect,

- (a) the county is responsible for the waste management powers assumed by the county in all participating local municipalities;
- (b) the county has all the powers conferred by any general or special Act upon the participating local municipalities or local boards thereof related to the waste management powers assumed by the county.

(10) If a county has assumed the power for providing services or facilities for the collection, removal, disposal, treatment, storage, processing, transfer, reduction, reuse, recovery or recycling of waste, no municipality under a similar or equivalent power, and no person, shall provide such services or facilities within the participating local municipalities without the consent of the council of the county, which consent may be given upon such terms and conditions, including the payment of compensation, as may be agreed upon.

County has  
exclusive  
jurisdiction

(11) Subsection (10) does not apply to prevent any person or municipality which does not form part of the county for municipal purposes or which is not a participating municipality from providing a waste management service or facility if that waste management service or facility was being lawfully provided on the effective date of the by-law, so long as that waste management service or facility continues without interruption.

Continuation  
of waste  
management  
services

(12) If consent is refused under subsection (10) or the applicant and the council of the county fail to agree on the terms and conditions related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter.

Appeal to  
O.M.B.  
where  
disagreement  
or consent  
denied

(13) The Municipal Board may impose such terms and conditions as it considers appropriate and the decision of the Municipal Board is final.

Terms

(14) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (13).

Non-  
application of  
R.S.O. 1980,  
c. 347, s. 94

(15) All rights and obligations and all assets and liabilities of a participating local municipality or local board thereof pertaining to or primarily used in connection with the waste management powers assumed by the county are vested in the county and financial adjustments, calculated in accordance with such criteria as may be prescribed, shall be made between the county and the participating local municipality or local board thereof.

Transfer of  
assets,  
liabilities



Assumption  
by county of  
certain debts

(16) The county shall pay to the participating local municipality or local board thereof on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of such participating local municipality or local board thereof in respect of the waste management powers assumed by the county.

Interest on  
late payments

(17) If the county fails to make any payment required under subsection (16) on or before the due date, the participating local municipality or local board may charge the county interest at the rate of 15 per cent per annum, or such lower rate as the local municipality or local board determines, from such date until payment is made.

Transfer of  
agreements  
to county

(18) If a participating local municipality or local board thereof had entered into an agreement with another person or municipality in respect of the waste management power assumed by the county, the county shall be bound by the agreement and the participating local municipality or local board thereof is relieved of all liability under the agreement.

Agreements  
respecting  
waste  
management

(19) The council of the county may enter into agreements with any person or municipality for establishing, constructing, operating or managing, at their joint expense and for their joint benefit, any waste management service or facility that is within the jurisdiction of the council as a result of the passage of the by-law under subsection (2).

Idem

(20) Where the county has passed a by-law under subsection (2) to empower it to adopt a waste management plan, the council of the county may enter into agreements with any municipality for developing, at their joint expense and for their joint benefit, joint objectives and policies for the provision of waste management services or facilities.

Collection of  
waste  
management  
rates

(21) Notwithstanding section 368e, the council of a county may by by-law provide for imposing on and collecting from participating local municipalities in which it is providing waste management services or facilities, a waste management rate sufficient to pay the whole or such portion as the by-law may specify of the capital costs including debenture charges and expenditures for the maintenance and operation of the waste management services or facilities in the participating local municipalities and such rate may vary based on the volume, weight or class of waste or on any other basis the council of the county considers appropriate and specifies in the by-law.

Rates  
constitute  
debt of  
county

(22) All rates under subsection (21) constitute a debt of the participating local municipality to the county and shall be pay-

able at such times and in such amounts as may be specified by by-law of the council of the county.

(23) Notwithstanding sections 368 and 368e, the participating local municipality may,

Payment and  
collection of  
rates

- (a) pay the whole or part of the amount chargeable to it under this section out of its general funds;
- (b) pass by-laws for imposing a rate sufficient to recover the whole or part of the amount chargeable to it under this section in the same manner as by-laws under paragraphs 85 and 86 of section 210 may be passed; and
- (c) include the whole or any part of an amount chargeable to it under this section as part of the cost of an urban service within an urban service area established in the participating local municipality under any general or special Act.

(24) If under a by-law passed under subsection (2) a county assumed the responsibility for providing services or facilities for the disposal, treatment, storage, processing, transfer, reduction, reuse, recovery or recycling of waste, the council of the county may, for each participating local municipality, designate one or more services or facilities for the disposal, treatment, storage, processing, transfer, reduction, reuse, recovery or recycling of waste or any class or classes thereof and, where such a designation has been made, a participating local municipality shall not utilize any services or facilities except the services or facilities that have been so designated for that local municipality.

Designation  
and  
utilization of  
waste  
management  
facilities

(25) If a dispute arises in respect of the financial adjustments or the vesting of assets, including a reserve fund, under subsection (15), or the transfer of agreements under subsection (18), the county, participating local municipality or local board affected may apply to the Municipal Board for a resolution of the dispute and the Municipal Board has power to hear and determine the matter and its decision is final

Dispute  
resolution

(26) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (25).

Non-  
application of  
R.S.O. 1980,  
c. 347, s. 94

(27) The Lieutenant Governor in Council may make regulations,

Regulations

- (a) prescribing, for the purposes of subsection (5), the persons and agencies that are to be given notice, the

manner in which notice is to be given and the information that must be contained therein;

- (b) providing for the security of employment and the protection of benefits of employees affected by by-laws passed or repealed under this section;
- (c) prescribing the criteria for determining the amount of the financial adjustments payable under subsection (15) and for providing which body shall pay and which body shall receive the financial adjustments under that subsection;
- (d) establishing a dispute settlement mechanism that may be used to attempt to resolve a dispute described in subsection (25) before an application is made to the Municipal Board.

**2. Subsection 368 (1) of the said Act is amended by adding at the commencement thereof "Subject to section 209a but".**

Commence-  
ment

**3. This Act comes into force on the day it receives Royal Assent.**

Short title

**4. The short title of this Act is the *Municipal Amendment Act, 1989*.**



## CHAPTER 44

### An Act to revise the McMichael Canadian Collection Act

*Assented to July 13th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Definitions

“Board” means the board of trustees of the Corporation;

“collection” means the art works and objects and the documentary materials related thereto held by the Corporation for exhibition or display;

“Corporation” means the corporation continued by section 2;

“Minister” means the Minister of Culture and Communications.

**2.—**(1) The corporation known as McMichael Canadian Collection is continued as a corporation without share capital.

McMichael  
Canadian  
Collection  
continued

(2) The English version of the name of the Corporation is changed to McMichael Canadian Art Collection.

English name

(3) The French version of the name of the Corporation is Collection McMichael d’art canadien.

French name

(4) The fiscal year of the Corporation commences on the 1st day of April in each year and ends on the 31st day of March in the following year.

Fiscal year

(5) The *Corporations Act* does not apply to the Corporation.

R.S.O. 1980,  
c. 95 does  
not apply

**3.—**(1) The Board shall consist of seventeen trustees as follows:

Composition  
of Board

1. Eleven trustees appointed by the Lieutenant Governor in Council.
2. Four trustees appointed by the Board.
3. Robert McMichael, Founder Director Emeritus.
4. Signe McMichael.

## Vacancy

(2) If Robert McMichael or Signe McMichael is unable or unwilling to be a trustee, the Board shall appoint another trustee to fill the position.

## Term of office

(3) A trustee may be appointed for a term not exceeding three years and may be reappointed for one or more further terms.

## Chairperson and vice-chairperson

(4) The Lieutenant Governor in Council shall designate one of the trustees as chairperson and one of the trustees as vice-chairperson of the Board.

## Chairperson to preside

(5) The chairperson shall preside at all meetings of the Board and, in the absence of the chairperson or if the office of chairperson is vacant, the vice-chairperson shall have all the powers and shall perform the duties of the chairperson.

## Quorum

(6) A majority of the trustees constitutes a quorum of the Board.

## Powers of Board

4.—(1) The affairs of the Corporation shall be under the control of the Board and the Board has all the powers necessary to perform its duties and to achieve the objects of the Corporation.

## By-laws

(2) The Board may make by-laws regulating its proceedings and may establish committees for the control and conduct of its internal affairs.

## Committees

(3) A by-law establishing a committee of the Board may delegate to the committee such powers and duties of the Board as are determined in the by-law.

## R.S.O. 1980, c. 446 does not apply

(4) The *Regulations Act* does not apply to by-laws made under this section.

## Appointment of Director

5.—(1) The Board, subject to the approval of the Minister, shall appoint a Director who shall be responsible for the management and administration of the Corporation, subject to the supervision and direction of the Board.

(2) The Board, subject to the approval of the Minister, may remove the Director. Removal of  
Director

(3) The Director shall appoint such employees as the Director considers necessary from time to time for the proper conduct of the business of the Corporation. Staff

(4) The Board shall fix and pay the salaries or other remuneration and benefits and provide for the retirement and superannuation of employees. Salaries

6. The Corporation is an agent of Her Majesty and its powers may be exercised only as an agent of Her Majesty and all property acquired by the Corporation is the property of Her Majesty. Corporation  
Crown  
agency

7.—(1) The objects of the Corporation are, Objects

- (a) to acquire art works, objects and documentary material for the collection;
- (b) to preserve and exhibit the collection;
- (c) to conduct research on and provide documentation for the collection;
- (d) to stimulate interest in the collection;
- (e) to conduct activities in order to enhance and complement the collection;
- (f) to hold, maintain and use the land described in the Schedule to the *McMichael Canadian Collection Act*, being chapter 259 of the Revised Statutes of Ontario, 1980, as a permanent site for a public gallery and related facilities for the collection.

(2) The Corporation may for the purpose of furthering its objects, Idem

- (a) acquire, hold, maintain, use or dispose of property;
- (b) with the approval of the Lieutenant Governor in Council, erect buildings and structures on lands that are not owned by the Corporation;
- (c) establish and collect fees as it considers necessary;



- (d) lend any part of the collection for public exhibition, subject to such conditions as the Corporation may impose;
- (e) conduct exhibitions, programs and special events;
- (f) enter into agreements;
- (g) allow for the interment, in that portion of the real property of the Corporation established as a cemetery under the *Cemeteries Act*, of the remains of any artist who was a member of the Group of Seven or of the remains of the spouse of any such artist;
- (h) allow for the interment, in that portion of the real property of the Corporation established as a cemetery under the *Cemeteries Act*, of the remains of Robert McMichael and Signe McMichael.

R.S.O. 1980,  
c. 59

Borrowing  
money

(3) Despite clause (2) (a), the Corporation shall not borrow money unless a guarantee is provided under section 12.

Disposal of  
work and  
land

(4) Despite clause (2) (a), no work of art or land donated by either Robert McMichael or Signe McMichael shall be disposed of by the Corporation.

Nature of  
collection

**8.** The Board shall ensure that the focus of the collection is the works of art created by Indian, Inuit and Metis artists, the artists of the Group of Seven and their contemporaries and other artists who have made or make a contribution to the development of Canadian Art.

Fund

**9.—**(1) The Board may establish and maintain such funds as it considers necessary and appropriate for the management of the Corporation.

Investment

(2) The Board may invest the moneys of the Corporation in those classes of securities as trustees are permitted to invest in under the laws of Ontario.

Remuner-  
ation, trustee

**10.** A trustee shall not receive remuneration for services rendered but shall be reimbursed for proper and reasonable travelling and other expenses incurred in the work of the Board.

Grants

**11.—**(1) The Minister may make grants to the Corporation upon such terms and conditions as the Minister considers advisable.

(2) The money required for the purposes of this section shall be paid out of the money appropriated therefor by the Legislature.

Moneys

**12.—**(1) The Lieutenant Governor in Council may, upon such terms as the Lieutenant Governor in Council considers proper, agree to guarantee and may guarantee the payment of any loan to the Corporation or any part thereof together with interest thereon borrowed for the purpose of carrying out the objects of the Corporation.

Guarantee of loans

(2) The form and manner of the guarantee shall be such as the Lieutenant Governor in Council approves.

Form of guarantee

(3) The guarantee shall be signed by the Treasurer of Ontario or such other officer or officers as are designated by the Lieutenant Governor in Council and, upon being so signed, the Province of Ontario is liable for the payment of the loan or part thereof and interest thereon guaranteed according to the terms of the guarantee.

Idem

(4) The Lieutenant Governor in Council may pay out of the Consolidated Revenue Fund the money necessary to satisfy any liability of the Province of Ontario under the guarantee.

Payment of guarantee

**13.** Real property owned, leased to or occupied by the Corporation is not liable to taxation for municipal or school purposes if it is actually used and occupied for the purposes of the Corporation.

Tax exemption

**14.** The financial statements of the Corporation shall be audited annually by an auditor appointed by the Board and a report of the audit shall be made to the Board and to the Minister.

Audit

**15.—**(1) The Board shall make an annual report on the affairs of the Corporation to the Minister.

Annual report

(2) The Minister shall submit the report to the Lieutenant Governor in Council who shall then lay the report before the Assembly.

Idem

(3) The Board shall prepare reports in addition to the annual report as the Minister may require from time to time.

Additional reports

**16.** The *McMichael Canadian Collection Act*, being chapter 259 of the Revised Statutes of Ontario, 1980, the *McMichael Canadian Collection Amendment Act*, 1982, being chapter 3 and section 32 of the *Equality Rights Statute Law Amendment Act*, 1986, being chapter 64, are repealed.

Repeals

Commence-  
ment

**17.** This Act comes into force on the day it receives Royal Assent.

Short title

**18.** The short title of this Act is the *McMichael Canadian Art Collection Act, 1989*.



## CHAPTER 45

### An Act to amend the Gasoline Tax Act

*Assented to July 26th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Clause 1 (d) of the *Gasoline Tax Act*, being chapter 186 of the Revised Statutes of Ontario, 1980, is amended by striking out “or” at the end of subclause (iii), by repealing subclause (iv) and by adding thereto the following subclauses:**

- (iv) ethanol, methanol or natural gas, or
- (v) propane, except when used or intended to be used in a motor vehicle licensed or required to be licensed under the *Highway Traffic Act*.

R.S.O. 1980,  
c. 198

**(2) Clause 1 (e) of the said Act is repealed and the following substituted therefor:**

- (e) “importer” means a person who brings or causes to be brought into Ontario gasoline in bulk, aviation fuel in bulk or propane in bulk.

**(3) Section 1 of the said Act, as amended by the Statutes of Ontario, 1985, chapter 24, section 1 and 1988, chapter 66, section 1, is further amended by adding thereto the following clauses:**

- (ba) “aviation fuel in bulk” means aviation fuel stored, transported or transferred by any means other than in a fuel tank of an aircraft or a motor vehicle in which aviation fuel for generating power in an aircraft or the motor vehicle is kept;

- (da) “gasoline in bulk” means gasoline stored, transported or transferred by any means other than in a

fuel tank of a motor vehicle in which gasoline for generating power in the motor vehicle is kept;

(ga) "propane" means any product commonly known as liquified petroleum gas that conforms to Grade 1 or Grade 2, as described in the Standard CAN/CGSB-3.14-M88 of the National Standards of Canada as published by the Canadian General Standards Board or that conforms to such other liquified petroleum gas standard as is published in replacement thereof by the Canadian General Standards Board and includes any substance added thereto;

(gb) "propane in bulk" means propane stored, transported or transferred by any means other than in a fuel tank of a motor vehicle in which propane for generating power in the motor vehicle is kept.

**2.—(1) Subsection 2 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 24, section 2 and amended by 1988, chapter 66, section 2, is repealed and the following substituted therefor:**

Tax on  
gasoline

(1) Every purchaser of gasoline shall pay to the Treasurer, a tax at the rate of,

- (a) 10.3 cents per litre on all gasoline purchased by, or delivered to, the purchaser before the 1st day of January, 1990; and
- (b) 11.3 cents per litre on all gasoline purchased by, or delivered to, the purchaser after the 31st day of December, 1989.

(2) Subsection 2 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 24, section 2, is amended by striking out "1.88" in the second line and inserting in lieu thereof "2.1".

(3) Section 2 of the said Act, as amended by the Statutes of Ontario, 1985, chapter 24, section 2 and 1988, chapter 66, section 2, is further amended by adding thereto the following subsection:

Tax on  
propane

(2b) Every purchaser of propane shall pay to the Treasurer, on all propane purchased by, or delivered to, the purchaser for use in a motor vehicle licensed or required to be licensed under the *Highway Traffic Act*, a tax at the rate of,

- (a) 2.3 cents per litre on propane purchased or delivered before the 1st day of January, 1990;
- (b) 4.3 cents per litre on propane purchased or delivered after the 31st day of December, 1989.

**3. Section 4 of the said Act is repealed and the following substituted therefor:**

**4.—(1)** Every importer shall, at the times and in the manner prescribed, collect from every wholesaler, retailer or purchaser to whom the importer sells aviation fuel, gasoline or propane, the tax collectable and payable under this Act and, for that purpose, every importer is an agent of the Minister for the collection of the tax imposed by this Act. Collection of tax

(2) Every importer who is a collector shall remit to the Treasurer, at the time and in the manner prescribed, the tax collectable and payable with respect to the aviation fuel, gasoline and propane imported by that person. Transmission of tax

(3) At the time of entry into Ontario from outside Canada of aviation fuel, gasoline or propane, every importer who is not a collector shall remit to the Treasurer, Security

(a) an amount as security equal to the tax that the importer would be obliged to collect under subsection (1) on the resale in Ontario of the aviation fuel, gasoline or propane; and

(b) the tax payable by the importer under subsection 2 (1).

(4) The remittance required by subsection (3) shall be made to a person authorized by the Minister for forwarding to the Treasurer by certified cheque or money order, payable to the Treasurer. Payment

(5) Every importer shall, at the times and in the manner prescribed, deliver to the Minister or to a person authorized by the Minister a return with respect to the aviation fuel, gasoline and propane imported by the importer. Returns

**4. The said Act is amended by adding thereto the following section:**

**16a.—(1)** Every person carrying aviation fuel in bulk, gasoline in bulk or propane in bulk and the operator of every motor vehicle carrying such products, shall, when requested by the Minister or any person authorized by the Minister, give Fuel in bulk



written evidence to the requester of any or all of the following information,

- (a) the name and address of any person from whom the aviation fuel, gasoline or propane was obtained and the name and address of any person to whom the aviation fuel, gasoline or propane so obtained was delivered or is to be delivered;
- (b) the quantity of aviation fuel, gasoline or propane delivered or to be delivered to any person;
- (c) the use or intended use, if known, to be made of any aviation fuel, gasoline or propane delivered or to be delivered from such motor vehicle.

Detention

(2) The Minister or a person authorized by the Minister may detain a motor vehicle carrying aviation fuel in bulk, gasoline in bulk or propane in bulk where,

- (a) written evidence requested under subsection (1) is not given;
- (b) the information in the written evidence that is given is false; or
- (c) the importer fails to comply with section 4 or fails to deliver any return in accordance with section 4.

Time

(3) The Minister or a person authorized by the Minister may detain a motor vehicle under subsection (2) until the written evidence is given, the true information is given, the remittance required under section 4 is delivered or the return in accordance with section 4 is delivered, as the case requires.

Liability

(4) During any detention under subsection (2), the Crown, or any person acting in the administration and enforcement of this Act, is not liable for any damages to the motor vehicle, its contents, cargo or freight, or to its owner or driver or otherwise that may occur or be alleged to occur by reason of the detention of the motor vehicle pending compliance with section 4 and subsection (1).

**5. Clauses 1 (e), (h), (j) and (l), subsections 2 (4), 3 (1), 4 (1), 4 (2), 6 (1), 6 (2), 6 (3) and 6 (4), clause 7 (1) (b), subsections 10 (2) and 20 (2), section 31 and clause 32 (2) (b), as enacted by the Statutes of Ontario, 1981, chapter 11, section 3, of the said Act are amended by striking out "gasoline or aviation fuel" wherever that expression occurs and inserting in lieu thereof in each instance "gasoline, aviation fuel or propane".**

**6.—(1)** Subject to subsections (2) and (3), this Act shall be deemed to have come into force on the 18th day of May, 1989. Commence-  
ment

(2) Subsection 1 (1), subsection 2 (3) and section 5 shall be deemed to have come into force on the 1st day of July, 1989 and apply in respect of propane purchased or delivered after the 30th day of June, 1989. Idem

(3) Subsections 1 (2) and (3) and sections 3 and 4 come into force on a day to be named by proclamation of the Lieutenant Governor. Idem

**7.** The short title of this Act is the *Gasoline Tax Amendment Act, 1989*. Short title

## CHAPTER 46

### An Act to revise the Justices of the Peace Act

*Assented to July 26th, 1989*

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

#### Definitions

#### 1. In this Act,

“Co-ordinator” means the Co-ordinator of Justices of the Peace appointed under section 13; (“coordonnateur”)

“non-presiding justice of the peace” means a person designated as a non-presiding justice of the peace under section 4; (“juge de paix non-président”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“presiding justice of the peace” means a person designated as a presiding justice of the peace under section 4; (“juge de paix-président”)

“regulations” means the regulations made under this Act; (“règlements”)



## CHAPITRE 46

### Loi portant révision de la Loi sur les juges de paix

*Sanctionnée le 26 juillet 1989*

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SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

**1** Les définitions qui suivent s'appliquent à la présente loi. Définitions

«Conseil d'évaluation» Le Conseil d'évaluation des juges de paix maintenu en fonction par l'article 9. («Review Council»)

«coordonnateur» Le coordonnateur des juges de paix nommé en vertu de l'article 13. («Co-ordinator»)

«juge de paix non-président» Personne désignée comme juge de paix non-président en vertu de l'article 4. («non-presiding justice of the peace»)

«juge de paix-président» Personne désignée comme juge de paix-président en vertu de l'article 4. («presiding justice of the peace»)

«prescrit» Prescrit par les règlements. («prescribed»)

“Review Council” means the Justices of the Peace Review Council continued by section 9. (“Conseil d’évaluation”)

Appointment  
of justices

**2.—(1)** The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint full-time and part-time justices of the peace.

Transition

R.S.O. 1980,  
c. 227

(2) Every person who receives a salary as a justice of the peace in accordance with subsection 7 (2) of the *Justices of the Peace Act* immediately before this Act comes into force shall be deemed to have been appointed as a full-time justice of the peace and every other person who is a justice of the peace immediately before this Act comes into force shall be deemed to have been appointed as a part-time justice of the peace.

Reappoint-  
ment as  
part-time

(3) The Lieutenant Governor in Council shall not appoint a full-time justice of the peace to be a part-time justice of the peace unless the Review Council recommends the reappointment.

Other work

(4) A justice of the peace shall not engage in any other remunerative work without the approval of the Review Council.

Oath of  
office

**3.** Every justice of the peace, before beginning the duties of office, shall make the following oath or affirmation in French or in English:

I, ....., solemnly swear (affirm) that I will faithfully and to the best of my skill and knowledge, execute the duties of a justice of the peace, and I will do so without fear or favour, affection or ill will. So help me God. (Omit last sentence in an affirmation.)

Presiding or  
non-presiding

**4.—(1)** The Lieutenant Governor in Council, on the recommendation of the Attorney General, shall designate every justice of the peace appointed after the coming into force of this Act as a presiding justice of the peace or a non-presiding justice of the peace.

Deemed  
designation

(2) Every justice of the peace who is authorized to preside at the trial of an offence described in clause 16 (c) (provincial offences) immediately before this Act comes into force and has not attained the age of seventy at that time shall be deemed to have been designated as a presiding justice of the peace.

Designation  
of other  
justices

(3) The Lieutenant Governor in Council, on the recommendation of the Review Council, may designate any other justice of the peace who is appointed before this Act comes into force and has not attained the age of seventy as a presid-

«règlements» Les règlements pris en application de la présente loi. («regulations»)

**2** (1) Le lieutenant-gouverneur en conseil peut, sur la recommandation du procureur général, nommer des juges de paix à temps plein et à temps partiel.

Nomination  
des juges de  
paix

(2) Les personnes qui reçoivent un traitement à titre de juge de paix conformément au paragraphe 7 (2) de la *Loi sur les juges de paix* immédiatement avant l'entrée en vigueur de la présente loi sont réputées avoir été nommées juges de paix à temps plein. Les autres personnes qui sont juges de paix immédiatement avant l'entrée en vigueur de la présente loi sont réputées avoir été nommées juges de paix à temps partiel.

Disposition  
transitoire  
L.R.O. 1980,  
chap. 227

(3) Le lieutenant-gouverneur en conseil ne nomme pas un juge de paix à temps plein pour qu'il devienne juge de paix à temps partiel, à moins que le Conseil d'évaluation ne recommande cette nouvelle nomination.

Nouvelle  
nomination à  
temps partiel

(4) Le juge de paix n'entreprend aucun autre travail rémunéré sans l'approbation du Conseil d'évaluation.

Autres  
fonctions

**3** Avant d'entrer en fonction, le juge de paix fait la prestation de serment ou l'affirmation solennelle suivante, en français ou en anglais :

Serment  
d'entrée en  
fonction

Je soussigné(e)....., déclare sous serment (affirme) que j'accomplirai fidèlement et de mon mieux les fonctions de juge de paix, et que j'agirai sans peur ni favoritisme, parti pris ni mauvaise volonté. Ainsi que Dieu me soit en aide. (S'il s'agit d'une affirmation, ne pas ajouter la dernière phrase.)

**4** (1) Le lieutenant-gouverneur en conseil, sur la recommandation du procureur général, désigne chaque juge de paix nommé après l'entrée en vigueur de la présente loi à titre de juge de paix-président ou juge de paix non-président.

Juge de paix-  
président ou  
non-président

(2) Sont réputés avoir été désignés à titre de juges de paix-présidents les juges de paix qui sont autorisés à présider le procès relatif à une infraction décrite à l'alinéa 16 c) (infractions provinciales) immédiatement avant l'entrée en vigueur de la présente loi et qui n'ont pas, à ce moment, atteint l'âge de soixante-dix ans.

Désignation  
réputée

(3) Le lieutenant-gouverneur en conseil, sur la recommandation du Conseil d'évaluation, peut désigner d'autres juges de paix nommés avant l'entrée en vigueur de la présente loi et qui n'ont pas atteint l'âge de soixante-dix ans à titre de juges de paix-présidents ou non-présidents.

Désignation  
d'autres juges  
de paix



ing justice of the peace or a non-presiding justice of the peace.

Undesignated  
justices

(4) A person appointed as a justice of the peace before this Act comes into force who is not designated under subsection (2) or (3) shall not exercise any authority or receive any remuneration as a justice of the peace.

Change of  
designation

(5) The Lieutenant Governor in Council shall not change the designation of a presiding justice of the peace to that of non-presiding justice of the peace.

Justices of  
the peace,  
*ex officio*

**5.** Every judge of the Supreme Court of Canada, the Federal Court of Canada, the Supreme Court of Ontario and the District Court of Ontario and every provincial judge is by virtue of his or her office a justice of the peace and also has power to do alone whatever two or more justices of the peace are authorized to do together.

Retirement

**6.** Every justice of the peace shall retire upon attaining the age of seventy years.

Resignation

**7.—(1)** A justice of the peace may resign from his or her office by delivering a signed letter of resignation to the Attorney General.

Effective  
date

(2) The resignation takes effect on the day the letter is delivered to the Attorney General or, if the letter specifies a later day, on that day.

Removal  
from office

**8.—(1)** A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.

Grounds for  
removal

(2) The order may be made only if,

(a) a complaint regarding the justice of the peace has been made to the Review Council; and

(b) the removal is recommended, following an inquiry held under section 12, on the ground that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of,

(i) infirmity,

(ii) conduct that is incompatible with the execution of the duties of his or her office, or

(4) La personne qui a été nommée juge de paix avant l'entrée en vigueur de la présente loi, mais qui n'est pas désignée aux termes du paragraphe (2) ou (3), n'exerce aucune compétence d'un juge de paix et ne reçoit aucune rémunération à ce titre.

Juges de paix  
non désignés

(5) Le lieutenant-gouverneur en conseil ne change pas la désignation du juge de paix-président en celle de juge de paix non-président.

Changement  
de la désigna-  
tion

5 Sont juges de paix d'office les juges de la Cour suprême du Canada, de la Cour fédérale du Canada, de la Cour suprême de l'Ontario et de la Cour de district de l'Ontario, ainsi que les juges provinciaux. En outre, chacun d'eux a le pouvoir d'accomplir seul les actes que deux ou plusieurs juges de paix sont autorisés à accomplir ensemble.

Juges de paix  
d'office

6 Le juge de paix prend sa retraite à l'âge de soixante-dix ans.

Retraite

7 (1) Le juge de paix peut démissionner en remettant au procureur général une lettre signée à cet effet.

Démission

(2) La démission prend effet le jour où elle est remise au procureur général ou, si la lettre de démission précise un jour postérieur, elle prend effet ce jour.

Date de prise  
d'effet

8 (1) Le juge de paix ne peut être destitué que par décret du lieutenant-gouverneur en conseil.

Destitution

(2) Le décret ne peut être pris que si :

Motifs per-  
mettant la  
destitution

- a) une plainte à son sujet a été portée au Conseil d'évaluation;
- b) sa destitution est recommandée, à la suite d'une enquête tenue aux termes de l'article 12, en raison du fait qu'il est devenu incapable de remplir convenablement ses fonctions ou inhabile pour l'une des raisons suivantes :

(i) il souffre d'une infirmité,

(ii) sa conduite est incompatible avec l'exercice de ses fonctions,

- (iii) having failed to perform the duties of his or her office as assigned.

Order to be  
tabled

(3) The order shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

Review  
Council

**9.—**(1) The Justices of the Peace Review Council is continued and shall be composed of,

- (a) the Chief Judge of the Provincial Court (Criminal Division) who shall preside over the Review Council;
- (b) the Chief Judge of the Provincial Court (Family Division);
- (c) the Co-ordinator;
- (d) a justice of the peace appointed by the Lieutenant Governor in Council; and
- (e) not more than two other persons appointed by the Lieutenant Governor in Council.

Quorum

(2) A majority of members of the Review Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Review Council.

Staff

R.S.O. 1980,  
c. 418

(3) Such officers and employees of the Review Council as are considered necessary may be appointed under the *Public Service Act*.

Expert  
assistance

(4) The Review Council may engage persons, including counsel, to assist it in its investigations.

Functions

**10.—**(1) The functions of the Review Council are,

- (a) to consider all proposed appointments and designations of justices of the peace and make reports concerning them to the Attorney General;
- (b) to receive and investigate complaints against justices of the peace.

Liability for  
damages

(2) No action or other proceeding for damages shall be instituted against the Review Council or its members or officers or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his or her duty.



(iii) il n'a pas rempli les fonctions qui lui sont assignées.

(3) Le décret est déposé devant l'Assemblée législative si elle siège, sinon, dans les quinze jours qui suivent le début de la session suivante.

Dépôt du décret

**9** (1) Le Conseil d'évaluation des juges de paix est maintenu et se compose des membres suivants :

Conseil d'évaluation

- a) le juge en chef de la Cour provinciale (Division criminelle), qui préside le Conseil;
- b) le juge en chef de la Cour provinciale (Division de la famille);
- c) le coordonnateur;
- d) un juge de paix nommé par le lieutenant-gouverneur en conseil;
- e) deux autres personnes, au plus, nommées par le lieutenant-gouverneur en conseil.

(2) La majorité des membres du Conseil d'évaluation constitue le quorum et peut exercer tous les pouvoirs et la compétence du Conseil.

Quorum

(3) Les employés du Conseil jugés nécessaires peuvent être engagés aux termes de la *Loi sur la fonction publique*.

Personnel  
L.R.O. 1980,  
chap. 418

(4) Le Conseil d'évaluation peut engager d'autres personnes, notamment des avocats, pour l'aider dans ses enquêtes.

Experts

**10** (1) Les fonctions du Conseil d'évaluation sont les suivantes :

Fonctions

- a) examiner les candidatures aux postes de juges de paix, ainsi que leurs désignations proposées, et en faire rapport au procureur général;
- b) recevoir les plaintes portées contre les juges de paix et faire enquête à leur sujet.

(2) Aucune action ou poursuite en dommages-intérêts ne peut être intentée contre le Conseil d'évaluation, ses membres ou employés ni contre quiconque agit sous son autorité, à l'égard d'un acte accompli de bonne foi dans l'exercice ou en vue de l'exercice de ses fonctions.

Responsabilité  
pour dommages-intérêts

Investigation  
of complaints

**11.—**(1) When the Review Council receives a complaint against a justice of the peace, it shall take such action to investigate the complaint, including a review of it with the justice of the peace, as it considers advisable.

Referral to  
Co-ordinator

(2) The Review Council may, if it considers it appropriate to do so, transmit complaints to the Co-ordinator.

Proceedings  
not public

(3) The proceedings of the Review Council shall not be public, but it may inform the Attorney General that it has undertaken an investigation and the Attorney General may make that fact public.

Prohibiting  
publication

(4) The Review Council may order that information or documents relating to its investigation not be published or disclosed except as required by law.

Powers

R.S.O. 1980,  
c. 411

(5) The Review Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act.

Notice of  
disposition

(6) When the Review Council has dealt with a complaint regarding a justice of the peace, it shall inform,

(a) the person who made the complaint; and

(b) the justice of the peace, if the complaint was brought to his or her attention,

of its disposition of the complaint.

Report and  
recommen-  
dations

(7) The Review Council may report its opinion regarding the complaint to the Attorney General and may recommend,

(a) that an inquiry be held under section 12;

(b) that the justice of the peace be compensated for all or part of his or her costs in connection with the investigation.

Copy to  
justice

(8) A copy of the report shall be given to the justice of the peace.

Right to be  
heard

(9) The Review Council shall not make a report unless the justice of the peace was notified of the investigation and given an opportunity to be heard and to produce evidence.

Publication  
of report

(10) The Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so.

**11** (1) Lorsque le Conseil d'évaluation reçoit une plainte contre un juge de paix, il prend les mesures qu'il estime opportunes pour faire enquête. Ces mesures peuvent comprendre une discussion de la plainte avec le juge de paix.

Enquête sur les plaintes

(2) Le Conseil d'évaluation peut, s'il le juge opportun, transmettre des plaintes au coordonnateur.

Plaintes transmises au coordonnateur

(3) Les enquêtes sont tenues à huis clos, mais le Conseil d'évaluation peut aviser le procureur général qu'il a entrepris une enquête. Le procureur général peut informer le public de ce fait.

Huis clos

(4) Le Conseil d'évaluation peut ordonner que des renseignements ou des documents qui portent sur l'enquête ne soient ni publiés ni divulgués, sauf dans la mesure exigée par la loi.

Publication interdite

(5) Le Conseil d'évaluation possède les pouvoirs d'une commission aux termes de la partie II de la *Loi sur les enquêtes publiques*. Cette partie s'applique à l'enquête du Conseil comme si elle était tenue en vertu de cette loi.

Pouvoirs  
L.R.O. 1980,  
chap. 411

(6) Lorsque le Conseil d'évaluation a traité d'une plainte relative à un juge de paix, il avise de la décision prise à l'égard de la plainte :

Avis de la décision

- a) la personne qui a porté plainte;
- b) le juge de paix, si la plainte a été portée à son attention.

(7) Le Conseil d'évaluation peut faire rapport au procureur général de son opinion à l'égard de la plainte et recommander :

Rapport et recommandations

- a) qu'une enquête soit tenue aux termes de l'article 12;
- b) que le juge de paix soit indemnisé, en tout ou en partie, des dépens que lui a occasionnés l'enquête.

(8) Une copie du rapport est remise au juge de paix.

Copie au juge de paix

(9) Le Conseil d'évaluation ne fait pas de rapport s'il n'a pas avisé le juge de paix de la tenue de l'enquête et ne lui a pas fourni l'occasion de se faire entendre et de présenter des preuves.

Droit de se faire entendre

(10) Le procureur général peut publier le rapport, en tout ou en partie, s'il le juge dans l'intérêt public.

Publication du rapport



Transition  
R.S.O. 1980,  
c. 227

(11) An investigation commenced under section 8 of the *Justices of the Peace Act* but not completed before this Act comes into force shall be continued in accordance with this Act by the Review Council as constituted under that section.

Inquiry

**12.**—(1) The Lieutenant Governor in Council may appoint a provincial judge to inquire into the question of whether a justice of the peace should be removed from office.

Powers  
R.S.O. 1980,  
c. 411

(2) The *Public Inquiries Act* applies to the inquiry.

Report

(3) The report of the inquiry may recommend,

(a) that the justice of the peace be removed from office;

(b) that the justice of the peace be compensated for all or part of his or her costs in connection with the inquiry.

Tabling of  
report

(4) The report shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

Co-ordinator  
appointed

**13.**—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, shall appoint a provincial judge as Co-ordinator of Justices of the Peace.

Term of  
office

(2) The Co-ordinator shall hold office for five years.

Idem

(3) If a successor is not appointed within five years, the Co-ordinator shall continue in office until the successor is appointed, but in no case shall the Co-ordinator hold office for more than seven years.

Former  
Co-ordinator  
report

(4) A Co-ordinator whose term of office expires under subsection (2) or (3) shall continue to hold the office of provincial judge and is entitled to an annual salary equal to the greater of,

(a) the current annual salary of a provincial judge; or

(b) the annual salary he or she received immediately before ceasing to be Co-ordinator.

Co-ordinator  
not to be  
reappointed

(5) A Co-ordinator whose term of office expires under subsection (2) or (3) shall not be reappointed as Co-ordinator.

(11) L'enquête commencée en vertu de l'article 8 de la *Loi sur les juges de paix* et qui n'a pas été terminée avant l'entrée en vigueur de la présente loi est continuée, conformément à la présente loi, par le Conseil d'évaluation tel qu'il est constitué aux termes de cet article.

Disposition  
transitoire  
L.R.O. 1980,  
chap. 227

**12** (1) Le lieutenant-gouverneur en conseil peut charger un juge provincial de faire enquête afin de déterminer si un juge de paix devrait être destitué.

Enquête

(2) La *Loi sur les enquêtes publiques* s'applique à l'enquête.

Pouvoirs  
L.R.O. 1980,  
chap. 411  
Rapport

(3) Le rapport de l'enquête peut recommander :

- a) que le juge de paix soit destitué de ses fonctions;
- b) que le juge soit indemnisé, en tout ou en partie, des dépens que lui a occasionnés l'enquête.

(4) Le rapport est déposé devant l'Assemblée législative si elle siège, sinon, dans les quinze jours qui suivent le début de la session suivante.

Dépôt du  
rapport

**13** (1) Le lieutenant-gouverneur en conseil, sur la recommandation du procureur général, nomme un juge provincial en tant que coordonnateur des juges de paix.

Nomination  
du coordon-  
nateur

(2) Le coordonnateur exerce ses fonctions pendant une période de cinq ans.

Mandat

(3) En l'absence de nomination d'un successeur dans les cinq ans, le coordonnateur continue à exercer ses fonctions jusqu'à la nomination du successeur. Le coordonnateur n'exerce toutefois pas ses fonctions pendant une période qui dépasse sept ans.

Idem

(4) Le coordonnateur dont le mandat expire aux termes du paragraphe (2) ou (3) continue à exercer les fonctions d'un juge provincial. Il a droit à un traitement annuel égal au plus élevé des montants suivants :

Ancien  
coordonnateur

- a) le traitement annuel que reçoit à ce moment-là un juge provincial;
- b) le traitement annuel qu'il recevait immédiatement avant de cesser d'être coordonnateur.

(5) Le coordonnateur dont le mandat expire aux termes du paragraphe (2) ou (3) n'est pas nommé de nouveau à ce poste.

Nouvelle  
nomination

Co-ordinator  
to supervise  
justices,  
assign duties

**14.**—(1) The Co-ordinator has general supervision and direction over sittings of justices of the peace and the assignment of their duties, subject to the direction of the Chief Judge of the Provincial Court (Criminal Division) or, in matters relating to the jurisdiction of the Provincial Court (Family Division), the Chief Judge of that court.

Idem

(2) The Co-ordinator's authority to assign duties includes authority to direct the times and places that justices of the peace shall perform their duties.

Part-time  
justices to  
follow duty  
roster

(3) A part-time justice of the peace shall not act as a justice of the peace except in accordance with a duty roster established by the Co-ordinator.

Duty rosters  
public

(4) The duty rosters shall be made available to the public.

Reports on  
duties  
performed

(5) Part-time justices of the peace shall submit to the Co-ordinator, when required by the Co-ordinator, reports containing the prescribed information on the duties they have performed.

Assistance to  
Co-ordinator

(6) Provincial judges shall assist the Co-ordinator in the supervision of justices and assignment of their duties and in the exercise of the Co-ordinator's other functions under this section, if the Co-ordinator or a chief judge so requests, and for the purpose they have the Co-ordinator's authority.

Assignment  
of duties to  
presiding  
justice

**15.**—(1) The following duties shall not be assigned to a presiding justice of the peace:

R.S.C. 1985,  
c. C-46

- (a) presiding at the trial of an offence under the *Criminal Code* (Canada);
- (b) presiding at the trial of an offence under any other Act of the Parliament of Canada, unless the offence is prescribed as an offence to the trial of which a presiding justice of the peace may be assigned;
- (c) holding a preliminary inquiry under Part XVIII of the *Criminal Code* (Canada);
- (d) exercising jurisdiction under section 67 (reading proclamation at riot), paragraph 537 (1) (b) or subsection 537 (2) or (3) (where accused may be men-



**14** (1) Le coordonnateur est chargé de l'administration et de la surveillance des sessions des juges de paix et de l'assignation de leurs fonctions. Ceci, sous réserve de la direction du juge en chef de la Cour provinciale (Division criminelle) ou, en ce qui concerne la compétence de la Cour provinciale (Division de la famille), du juge en chef de ce tribunal.

Surveillance,  
etc., par le  
coordonnateur

(2) Le pouvoir du coordonnateur en ce qui concerne l'assignation des fonctions des juges de paix comprend le pouvoir de fixer la date, l'heure et le lieu où ces fonctions seront exercées.

Idem

(3) Le juge de paix à temps partiel n'exerce les fonctions d'un juge de paix qu'en conformité avec un tableau de service établi par le coordonnateur.

Tableau de  
service

(4) Les tableaux de service sont mis à la disposition des membres du public.

Tableaux de  
service acces-  
sibles au  
public

(5) Les juges de paix à temps partiel soumettent au coordonnateur, à sa demande, des rapports qui comprennent les renseignements prescrits au sujet des fonctions qu'ils ont remplies.

Rapport

(6) Les juges provinciaux prêtent leur aide au coordonnateur, en ce qui concerne la surveillance des juges de paix et l'assignation de leurs fonctions, et dans l'exercice des autres compétences du coordonnateur visées au présent article, à la demande du coordonnateur ou d'un juge en chef. À cette fin, ils disposent des mêmes pouvoirs que le coordonnateur.

Aide au coor-  
donnateur

**15** (1) Les fonctions suivantes ne sont pas assignées au juge de paix-président :

Assignation  
des fonctions  
au juge de  
paix-président

- a) présider le procès relatif à une infraction visée au *Code criminel* (Canada);
- b) présider le procès relatif à une infraction visée à une autre loi du Parlement du Canada, à moins que l'infraction n'ait été prescrite comme étant une infraction dont un juge de paix-président peut être affecté à présider le procès qui y est relatif;
- c) tenir une enquête préliminaire aux termes de la partie XVIII du *Code criminel* (Canada);
- d) exercer les compétences visées à l'article 67 du *Code criminel* (Canada) (proclamation lors d'une émeute), à l'alinéa 537 (1) b) et aux paragraphes

L.R.C. 1985,  
chap. C-46

R.S.C. 1985,  
c. C-46

tally ill) or section 543 (remand where offence committed in another jurisdiction) of the *Criminal Code* (Canada).

Exception

(2) Subsection (1) does not apply to adjournments.

Assignment  
of duties to  
non-presiding  
justice

**16.** The following duties shall not be assigned to a non-presiding justice of the peace:

- (a) the duties described in section 15;
- (b) presiding at the trial of an offence that is prescribed as one to the trial of which a presiding justice of the peace may be assigned;
- (c) presiding at the trial of an offence under an Act of the Legislature or under a regulation or by-law made under the authority of such an Act;
- (d) exercising jurisdiction under section 7 (plea of guilty with representations) or 9 or 19 (default conviction) of the *Provincial Offences Act*;
- (e) presiding at a hearing to determine whether a person should be released from or detained in custody;
- (f) exercising authority to issue a warrant to levy a tax, toll or dues under,

R.S.O. 1980,  
c. 400

(i) section 33 of the *Public Works Act* (Canada),

R.S.O. 1980,  
c. 229

(ii) section 66 of the *Lakes and Rivers Improvement Act*, or

R.S.O. 1980,  
c. 302

(iii) subsection 387 (6) of the *Municipal Act*;

- (g) determining whether a thing should be forfeited or held under,

R.S.C. 1985,  
c. M-7

(i) section 8 of the *Migratory Birds Convention Act* (Canada), or

537 (2) et (3) (procédures lorsque le prévenu peut être atteint d'une maladie mentale) et à l'article 543 de cette loi (renvoi lorsque l'infraction a été commise dans une autre juridiction).

(2) Le paragraphe (1) ne s'applique pas aux ajournements. Exception

**16** Les fonctions suivantes ne sont pas assignées au juge de paix non-président : Assignation des fonctions au juge de paix non-président

- a) les fonctions décrites à l'article 15;
- b) présider le procès relatif à une infraction qui est prescrite comme étant une infraction dont un juge de paix-président peut être affecté à présider le procès qui y est relatif;
- c) présider le procès relatif à une infraction visée à une loi de la Législature, ou à un règlement pris en application d'une telle loi;
- d) exercer une compétence en vertu de l'article 7 de la *Loi sur les infractions provinciales* (plaidoyer de culpabilité et observations) ou en vertu de l'article 9 ou 19 de cette loi (reconnaissance de culpabilité en l'absence du défendeur); L.R.O. 1980, chap. 400
- e) présider une audience pour décider si une personne devrait être détenue sous garde ou libérée;
- f) exercer le pouvoir de décerner des mandats afin de percevoir des impôts, des droits ou des péages en vertu des dispositions suivantes :
  - (i) l'article 33 de la *Loi sur les travaux publics* (Canada), L.R.C. 1985, chap. P-38
  - (ii) l'article 66 de la *Loi sur l'aménagement des lacs et des rivières*, L.R.O. 1980, chap. 229
  - (iii) le paragraphe 387 (6) de la *Loi sur les municipalités*; L.R.O. 1980, chap. 302
- g) décider si des choses doivent être confisquées ou détenues en vertu des dispositions suivantes :
  - (i) l'article 8 de la *Loi sur la Convention concernant les oiseaux migrateurs* (Canada), L.R.C. 1985, chap. M-7



R.S.C. 1985,  
c. N-14

(ii) subsection 8 (3) of the *National Parks Act* (Canada);

R.S.O. 1980,  
c. 262

(h) determining whether an order should be issued under section 10 of the *Mental Health Act* (examination by physician);

(i) presiding at a hearing to determine a dispute under,

R.S.C. 1985,  
c. S-9

(i) section 205 of the *Canada Shipping Act*,

R.S.C. 1985,  
c. F-14

(ii) section 11 of the *Fisheries Act* (Canada),

R.S.O. 1980,  
c. 257

(iii) section 4 of the *Master and Servant Act*, or

R.S.O. 1980,  
c. 372

(iv) section 25, 26 or 27 of the *Pawnbrokers Act*;

(j) a duty that is prescribed as one that shall not be assigned to a non-presiding justice.

Jurisdiction  
of justices

**17.—(1)** Justices of the peace have jurisdiction throughout Ontario.

Idem

(2) Subject to sections 15 and 16, justices of the peace shall exercise the powers and perform the duties conferred or imposed on a justice of the peace by or under an Act of the Legislature or of the Parliament of Canada.

Justices to  
assist public

(3) Justices of the peace shall assist members of the public, at their request, in formulating informations in respect of offences.

Salary of  
part-time  
justices

**18.** The salary, if any, to which each part-time justice of the peace is entitled shall be based on the Co-ordinator's determination of the justice's workload and calculated in accordance with the regulations.

Directions

**19.—(1)** The Co-ordinator may issue directions to justices of the peace on questions of law and procedure.

Directions  
binding on  
justices

(2) Justices of the peace shall follow a direction issued under subsection (1) unless it has been disapproved by a court on an appeal or a review.

- (ii) le paragraphe 8 (3) de la *Loi sur les parcs nationaux* (Canada); L.R.C. 1985, chap. N-14
- h) décider si une ordonnance doit être rendue en vertu de l'article 10 de la *Loi sur la santé mentale* (examen par un médecin); L.R.O. 1980, chap. 262
- i) présider des audiences en vue de régler des différends en vertu des dispositions suivantes :
  - (i) l'article 205 de la *Loi sur la marine marchande du Canada*, L.R.C. 1985, chap. S-9
  - (ii) l'article 11 de la *Loi sur les pêcheries* (Canada), L.R.C. 1985, chap. F-14
  - (iii) l'article 4 de la *Loi sur le louage de services*, L.R.O. 1980, chap. 257
  - (iv) les articles 25, 26 et 27 de la *Loi sur le prêt sur gage*; L.R.O. 1980, chap. 372
- j) exercer les fonctions qui ont été prescrites comme étant des fonctions qui ne sont pas assignées au juge de paix non-président.

**17** (1) Les juges de paix ont compétence dans tout l'Ontario. Compétence des juges de paix

(2) Sous réserve des articles 15 et 16, les juges de paix exercent les pouvoirs et remplissent les fonctions que leur confère une loi de la Législature ou du Parlement du Canada ou qui leur sont conférées en vertu d'une telle loi. Idem

(3) Les juges de paix prêtent leur aide aux membres du public, lorsque ces derniers le demandent, en ce qui concerne la formulation des dénonciations. Aide au public

**18** Les traitements, le cas échéant, auxquels ont droit les juges de paix à temps partiel correspondent à l'évaluation de leurs charges de travail que fait le coordonnateur. Les traitements sont calculés conformément aux règlements. Traitements des juges de paix à temps partiel

**19** (1) Le coordonnateur peut donner aux juges de paix des directives portant sur des questions de droit et de procédure. Directives

(2) Les juges de paix suivent la directive donnée aux termes du paragraphe (1), à moins qu'elle n'ait été désapprouvée par le tribunal lors d'un appel ou d'une révision. Effet sur les juges de paix

Directions to  
be published

(3) The Co-ordinator shall cause the directions to be published in *The Ontario Gazette*.

Immunity  
from liability

**20.** A justice of the peace has the same immunity from liability as a judge of the Supreme Court.

Regulations

**21.—(1)** The Lieutenant Governor in Council may make regulations,

R.S.C. 1985,  
c. C-46

- (a) prescribing offences under Acts of Parliament other than the *Criminal Code* (Canada) in respect of which a presiding justice of the peace may be assigned to preside at a trial;
- (b) prescribing the information to be included in reports under subsection 14 (5);
- (c) prescribing the salaries of full-time justices of the peace and prescribing the manner in which the salaries of part-time justices of the peace shall be calculated, including the factors to be taken into account and the method of calculation to be used;
- (d) providing for the benefits to which full-time and part-time justices of the peace are entitled;
- (e) providing for the payment of additional compensation to full-time and part-time justices of the peace for special assignments;
- (f) prescribing duties that shall not be assigned to a non-presiding justice of the peace.

Classes

(2) A regulation made under clause (1) (c) or (d) may prescribe classes of full-time and part-time justices of the peace for the purpose of salaries and benefits.

Justices of  
the peace  
who are  
public  
servants

(3) A regulation made under clause (1) (c) or (d) may provide that the duties performed, in the course of their public service employment, by justices of the peace who are also employed in the public service of Ontario shall not be considered in calculating their salary and benefits under this Act.

Contributions

(4) A regulation made under clause (1) (d) may require justices of the peace to contribute from their salaries part of the cost of a benefit and may fix the amount of the contributions.



(3) Le coordonnateur fait publier les directives dans la *Gazette de l'Ontario*. Publication des directives

**20** Le juge de paix jouit de la même immunité qu'un juge de la Cour suprême en ce qui concerne la responsabilité personnelle. Immunité

**21** (1) Le lieutenant-gouverneur en conseil peut, par règlement : Règlements

- a) prescrire des infractions visées aux lois du Parlement du Canada, à l'exclusion du *Code criminel* (Canada), dont un juge de paix-président peut être affecté au procès qui y est relatif; L.R.C. 1985, chap. C-46
- b) prescrire les renseignements qui doivent figurer dans les rapports visés au paragraphe 14 (5);
- c) prescrire les traitements des juges de paix à temps plein et prescrire les modalités selon lesquelles sont calculés les traitements des juges de paix à temps partiel, y compris les facteurs dont il est tenu compte et la méthode de calcul utilisée;
- d) prévoir les avantages sociaux auxquels ont droit les juges de paix à temps plein et à temps partiel;
- e) prévoir le versement d'une rémunération additionnelle aux juges de paix à temps plein et à temps partiel en ce qui concerne les affectations particulières;
- f) prescrire les fonctions qui ne sont pas assignées au juge de paix non-président.

(2) Un règlement pris en application de l'alinéa (1) c) ou d) peut prescrire des catégories de juges de paix à temps plein et à temps partiel aux fins de leurs traitements et avantages sociaux. Catégories

(3) Un règlement pris en application de l'alinéa (1) c) ou d) peut prévoir qu'il n'est pas tenu compte, en ce qui concerne le calcul de leurs traitements et avantages sociaux en vertu de la présente loi, des fonctions qu'accomplissent dans le cadre de leur travail au sein de la fonction publique des juges de paix qui font également partie de la fonction publique. Juges de paix qui sont fonctionnaires

(4) Un règlement pris en application de l'alinéa (1) d) peut exiger que soient prélevées sur les traitements des juges de paix des cotisations qui couvrent une partie du coût d'un Cotisations

## Benefits

(5) A regulation made under clause (1) (d) may provide that justices of the peace whose salaries are less than prescribed amounts are not entitled to prescribed benefits.

## Territorial limitations

(6) A regulation made under clause (1) (e) may be limited territorially.

## Application of certain provisions

**22.**—(1) Sections 4, 15, 16 and 18 and subsection 17 (2) do not apply in an area in Ontario until the Lieutenant Governor in Council by regulation provides that they apply in that area.

## Idem

(2) The following apply in any area in which sections 4, 15, 16 and 18 and subsection 17 (2) do not apply:

1. Justices of the peace shall exercise the powers and perform the duties conferred or imposed on a justice of the peace by or under an Act of the Legislature or of the Parliament of Canada when so directed by the Co-ordinator or a judge designated by the Co-ordinator.
2. Part-time justices of the peace shall be paid such fees, allowances and expenses as are prescribed under the *Administration of Justice Act*.
3. Despite section 6, a part-time justice of the peace appointed before the day section 6 comes into force may exercise the powers and perform the duties of a justice of the peace after attaining the age of seventy years when assigned to do so by the Co-ordinator or a judge designated by the Co-ordinator.

R.S.O. 1980,  
c. 6

## Regulations

(3) The Lieutenant Governor in Council may make regulations declaring that sections 4, 15, 16 and 18 and subsection 17 (2) apply in one or more areas of the Province.

**23.**—(1) Section 2 of the *Commissioners for taking Affidavits Act*, being chapter 75 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

## Provincial judges, justices of the peace

(1a) Every provincial judge and every justice of the peace is *ex officio* a commissioner for taking affidavits in Ontario.

avantage social. Ce règlement peut également fixer le montant des cotisations.

(5) Un règlement pris en application de l'alinéa (1) d) peut prévoir que les juges de paix dont les traitements sont inférieurs à des montants prescrits n'ont pas droit à des avantages sociaux prescrits. Avantages sociaux

(6) Un règlement pris en application de l'alinéa (1) e) peut être assujéti à des limitations territoriales. Limitations territoriales

**22** (1) Les articles 4, 15, 16 et 18 et le paragraphe 17 (2) ne s'appliquent pas dans une région de l'Ontario avant que le lieutenant-gouverneur en conseil ne prévienne, par règlement, leur application dans cette région. Champ d'application de certaines dispositions

(2) Les règles qui suivent s'appliquent à toute région à laquelle les articles 4, 15, 16 et 18 et le paragraphe 17 (2) ne s'appliquent pas : Idem

1. Lorsque le coordonnateur ou le juge qu'il désigne le leur ordonne, les juges de paix exercent les pouvoirs et remplissent les fonctions que leur confère une loi de la Législature ou du Parlement du Canada ou qui leur sont conférés en vertu d'une telle loi.
2. Les juges de paix à temps partiel reçoivent les honoraires, indemnités et débours qui sont prescrits en vertu de la *Loi sur l'administration de la justice*.
3. Malgré l'article 6, lorsque le coordonnateur ou le juge qu'il désigne lui assigne de ce faire, le juge de paix à temps partiel qui a été nommé avant le jour de l'entrée en vigueur de l'article 6 peut exercer les pouvoirs et remplir les fonctions d'un juge de paix après avoir atteint l'âge de soixante-dix ans.

L.R.O. 1980,  
chap. 6

(3) Le lieutenant-gouverneur en conseil peut prendre des règlements qui prévoient l'application des articles 4, 15, 16 et 18 et du paragraphe 17 (2) dans une ou plusieurs régions de la province. Règlements

**23** (1) L'article 2 de la *Loi sur les commissaires aux affidavits*, qui constitue le chapitre 75 des Lois refondues de l'Ontario de 1980, est modifié par adjonction du paragraphe suivant :

(1a) Every provincial judge and every justice of the peace is *ex officio* a commissioner for taking affidavits in Ontario.\* Provincial judges, justices of the peace



(2) Section 13 of the said Act is amended by striking out “notary public or justice of the peace” in the third line and inserting in lieu thereof “or notary public”.

**24.** Subsection 61 (3) of the *Courts of Justice Act, 1984*, being chapter 11, is repealed.

**25.** Paragraph 1 of subsection 5 (1) of the *Election Act, 1984*, being chapter 54, is amended by adding at the end thereof “or justices of the peace”.

**26.** The *Justices of the Peace Act*, being chapter 227 of the Revised Statutes of Ontario, 1980, the *Justices of the Peace Amendment Act, 1984*, being chapter 8 and section 22 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64, are repealed.

**27.** Clause 8 (2) (c) of the *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, is amended by striking out “justice of the peace” in the first line.

**28.** Subsection 13 (1) of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed.

**29.—**(1) Sections 1, 2, 3 and 5 and subsection 6 (1) of the *Public Authorities Protection Act*, being chapter 406 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 7 (1) of the said Act is amended by striking out “against the justice of the peace who made the conviction or” in the second and third lines.

Commence-  
ment

**30.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**31.** The short title of this Act is the *Justices of the Peace Act, 1989*.

(2) L'article 13 de cette loi est modifié par substitution, à «notary public or justice of the peace» à la troisième ligne, de «or notary public».

**24** Le paragraphe 61 (3) de la *Loi de 1984 sur les tribunaux judiciaires*, qui constitue le chapitre 11, est abrogé.

**25** La disposition 1 du paragraphe 5 (1) de la *Loi électorale de 1984*, qui constitue le chapitre 54, est modifiée par adjonction de «or justices of the peace».

**26** La *Loi sur les juges de paix*, qui constitue le chapitre 227 des Lois refondues de l'Ontario de 1980, la *Loi de 1984 modifiant la Loi sur les juges de paix*, qui constitue le chapitre 8 et l'article 22 de la *Loi de 1986 modifiant des lois concernant les droits à l'égalité*, qui constitue le chapitre 64, sont abrogés.

**27** L'alinéa 8 (2) c) de la *Loi sur l'Assemblée législative*, qui constitue le chapitre 235 des Lois refondues de l'Ontario de 1980, est modifié par suppression des mots «justice of the peace» à la première ligne.

**28** Le paragraphe 13 (1) de la *Loi sur les mines*, qui constitue le chapitre 268 des Lois refondues de l'Ontario de 1980, est abrogé.

**29** (1) Les articles 1, 2, 3 et 5 et le paragraphe 6 (1) de la *Loi sur l'immunité des personnes publiques*, qui constitue le chapitre 406 des Lois refondues de l'Ontario de 1980, sont abrogés.

(2) Le paragraphe 7 (1) de cette loi est modifié par suppression des mots «against the justice of the peace who made the conviction or» aux deuxième et troisième lignes.

**30** La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation. Entrée en vigueur

**31** Le titre abrégé de la présente loi est *Loi de 1989 sur les juges de paix*. Titre abrégé

\*Les lois modifiées n'ayant été promulguées qu'en anglais, il n'existe pas de texte français exigeant une modification législative.

Because the amended statutes were enacted only in English, there is no French text to amend.





## CHAPTER 47

### An Act to amend the Workers' Compensation Act

*Assented to July 26th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Subsection 1 (1) of the *Workers' Compensation Act*, being chapter 539 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:**

- (ea) “contributions for employment benefits”, in relation to a worker, means amounts paid in whole or in part by an employer on behalf of the worker or the worker's spouse or dependants for health care, life insurance and pension benefits;

. . . . .

- (g) “disability”, in relation to an injured worker, means the loss of earning capacity of the worker that results from an injury.

**(2) Clause 1 (1) (i) of the said Act is amended by adding at the end thereof “but does not include contributions made under section 5a for employment benefits”.**

**(3) The said subsection 1 (1) is further amended by adding thereto the following clauses:**

- (la) “impairment”, in relation to an injured worker, means any physical or functional abnormality or loss including disfigurement which results from an injury and any psychological damage arising from the abnormality or loss;

. . . . .

- (va) “permanent impairment”, in relation to an injured worker, means impairment that continues to exist

after maximum medical rehabilitation of the worker has been achieved;

. . . . .

(xb) "student" means a person who is pursuing formal education as a full-time or part-time student and is employed by an employer for the purposes of the employer's industry, although not as a learner or an apprentice.

(4) Subclause 1 (1) (z) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 1, is amended by inserting at the end thereof "or student".

2. Subsection 3 (7) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 3, is amended by striking out "disability" in the last line and inserting in lieu thereof "impairment".

3. The said Act is amended by adding thereto the following section:

Employment  
benefits for  
injured  
workers

**5a.**—(1) An employer, throughout the first year after an injury to a worker, shall make contributions for employment benefits in respect of the worker when the worker is absent from work because of the injury.

Deeming  
provision

(2) For the purpose of determining a worker's entitlement to benefits under a benefit plan, fund or arrangement, a worker shall be deemed, for one year after the date the injury occurred, to continue to be employed by the worker's employer on the date of the injury.

Penalty

(3) If the Board finds that an employer has not complied with its obligations under subsection (1), the Board may levy a penalty on the employer to a maximum of the amount of one year's contributions for employment benefits in respect of the worker.

Liability for  
loss

(4) The employer is liable to a worker for any loss the worker suffers as a result of the employer's failure to make the contributions required by subsection (1).

Eligibility

(5) Contributions under subsection (1) are required only if,

(a) the employer was making contributions for employment benefits in respect of the worker when the injury occurred; and

(b) the worker continues to pay his or her contributions, if any, for the employment benefits while absent from work.

(6) If a worker is injured while engaged in employment described in subsection 1 (2) or (4), the worker's employer, other than the employer described in subsection 1 (2) or (4), shall be deemed to be the employer for the purposes of this section. Emergency workers

(7) If an employer makes contributions under subsection (1) in respect of a worker described in subsection (6), the employer described in subsection 1 (2) or (4) shall reimburse the employer for the contributions. Idem

(8) Subsection (1) does not apply to an employer who participates in a multi-employer benefit plan in respect of a worker if, throughout the first year after the worker is injured whenever the worker is absent from work because of the injury, Multi-employer benefit plans

(a) the plan continues to provide the worker with the benefits to which the worker would otherwise be or become entitled under the plan; and

(b) the plan does not require contributions from the employer during the absence and does not require the worker to draw on the worker's benefit credits, if any, under the plan during the absence.

(9) A multi-employer benefit plan shall contain and, if it does not do so, shall be deemed to contain provisions sufficient, Amendment of multi-employer benefit plans

(a) to enable all employers who participate in the plan to be exempted under subsection (8) from the requirement to make contributions; and

(b) to provide each worker with the benefits described in subsection (8) in the circumstances described in that subsection.

(10) Subsection (9) shall come into force two years after the date on which this section comes into force. Commencement

**4. Section 13 of the said Act is amended by striking out "disability" wherever it occurs and inserting in lieu thereof in each instance "impairment".**



**5.** Section 23 of the said Act is amended by striking out “permanent disability” in the sixth line and inserting in lieu thereof “compensation”.

**6.** Section 24 of the said Act is amended by inserting after “payment” in the first line “under section 40” and by striking out “hereinafter prescribed” in the last line and inserting in lieu thereof “amount payable under that section”.

**7.** Section 27 of the said Act is repealed.

**8.** Section 28 of the said Act is repealed.

**9.** Subsection 32 (1) of the said Act is amended by striking out “disability” in the second line and inserting in lieu thereof “impairment”.

**10.—(1)** Section 36 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 9 and amended by 1985, chapter 3, section 1, is further amended by adding thereto the following subsections:

Vocational  
rehabilitation

(1a) The spouse of a deceased worker may apply to the Board within one year after the worker's death for a vocational rehabilitation assessment, and after an assessment the Board shall provide a vocational rehabilitation program to the spouse if the Board considers it appropriate to do so.

Idem

(1b) Subsections 54a (11) and (12) apply with respect to a vocational rehabilitation program provided to a spouse.

(2) Subsection 36 (13) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 9, is repealed and the following substituted therefor:

Deductions  
for C.P.P.  
and Q.P.P.  
payments

(13) In calculating the compensation payable by way of periodic payments under this section, the Board shall have regard to any payments of survivor benefits for death caused by injury that are received under the Canada Pension Plan or the Quebec Pension Plan in respect of the deceased worker.

(3) Subsection 36 (16) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 3, section 1, is amended by striking out “\$31,500 per annum” in the last line and inserting in lieu thereof “the maximum amount determined under section 41”.

**11.—(1)** Subsection 40 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is

amended by adding at the end thereof "or until the worker begins receiving payments under section 45a".

(2) Subsection 40 (3) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is repealed and the following substituted therefor:

(3) In determining the amount to be paid under clause (2) (b), the Board shall have regard to any disability payments the worker receives under the Canada Pension Plan and the Quebec Pension Plan with respect to the injury and, if subclause (2) (b) (i) or (ii) applies, the compensation shall be a periodic amount proportionate to the degree of disability resulting from the injury as determined by the Board.

Deductions  
for C.P.P.  
and Q.P.P.  
payments

**12.** Section 41 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is repealed and the following substituted therefor:

**41.—**(1) For the purposes of this Act, the maximum amount of average earnings upon which the loss of earnings is to be calculated,

Maximum  
earnings

- (a) effective on the day this subsection comes into force, is the maximum amount of average earnings determined under this section as it read immediately before this subsection came into force;
- (b) effective on the 1st day of January of the year following the year in which this section comes into force, is \$42,000; and
- (c) effective on the 1st day of January of each year after the effective date for the amount in clause (b), is 175 per cent of the average industrial wage for Ontario for the year, determined in accordance with subsection (3).

(2) Part IV of this Act does not apply to the maximum amount of average earnings determined under subsection (1).

Application  
of  
Part IV

(3) For the purposes of clause (1) (c), the average industrial wage for Ontario is an amount applicable from the 1st day of January to the 31st day of December in a year, the calculation of which is based upon the most recent published material that is available on the 1st day of July of the preceding year, and the amount of which is based upon the estimated weekly earnings industrial aggregate for Ontario as published by Statistics Canada.

Determi-  
nation of the  
average  
industrial  
wage

**13.—(1)** Subsection 42 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is amended by striking out “impairment of earning capacity” in the last line and inserting in lieu thereof “degree of disability”.

(2) Subsection 42 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11 and amended by the Statutes of Ontario, 1985, chapter 3, section 2, is repealed.

**14.** Subsection 43 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is repealed and the following substituted therefor:

Apprentices,  
learners and  
students

(6) Notwithstanding subsection (1), if a worker was an apprentice, learner or student at the time of the accident, the Board shall determine the worker's average earnings using such criteria as may be prescribed by regulation.

**15.** Section 45 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11 and amended by the Statutes of Ontario, 1985, chapter 3, section 3, is repealed and the following substituted therefor:

Non-  
economic loss  
where  
permanent  
impairment

**45.—(1)** A worker who suffers permanent impairment as a result of an injury is entitled to receive compensation for non-economic loss in addition to any other benefit receivable under this Act.

Compen-  
sation for  
non-economic  
loss

(2) The compensation for a worker's non-economic loss from an injury is determined by multiplying,

(a) the percentage of the worker's permanent impairment arising from the injury as determined by the Board; and

(b) \$45,000,

(i) plus \$1,000 for each year of age of the worker under forty-five years at the time of the injury, to a maximum of \$20,000, or

(ii) minus \$1,000 for each year of age of the worker over forty-five years at the time of the injury, to a maximum of \$20,000.

Payment

(3) If the compensation for non-economic loss is greater than \$10,000, it shall be paid as a monthly payment for the life of the worker unless the worker elects to receive the compensation as a lump sum.



(4) If the compensation for non-economic loss is less than or equal to \$10,000, it shall be paid as a lump sum. Idem

(5) The Board shall determine in accordance with the prescribed rating schedule and having regard to medical assessments conducted under this section the degree of a worker's permanent impairment expressed as a percentage of total permanent impairment. Determination by Board

(6) A medical practitioner who conducts a medical assessment under this section shall, Medical assessment

(a) examine the worker; and

(b) assess the extent of the worker's permanent impairment, having regard to the existing and anticipated likely future consequences of the injury.

(7) In conducting a medical assessment, the medical practitioner shall consider any report by the treating physician of an injured worker. Idem

(8) A medical practitioner shall promptly forward a copy of a medical assessment to the Board. Idem

(9) After maximum medical rehabilitation of an injured worker is achieved, a medical assessment of the worker shall be conducted. Requirement for medical assessment

(10) The worker may select a medical practitioner from a roster provided by the Board who shall conduct the worker's medical assessment. Selection of medical practitioner

(11) If a worker does not make a selection under subsection (10) within thirty days after the Board provides the worker with a roster of medical practitioners, a medical practitioner appointed by the Board shall conduct the medical assessment. Idem

(12) The Board shall send a copy of a medical assessment conducted under subsection (9) to the worker and to the employer who employed the worker on the date of the injury. Notification of worker and employer

(13) A worker, an employer or the Board may, within forty-five days after the medical assessment is sent under subsection (12), require a second medical assessment of the worker. Request for second assessment

(14) A worker or an employer who requires a second medical assessment shall give notice thereof to the Board within the forty-five day period referred to in subsection (13). Notice

Selection of  
medical  
practitioner

(15) If a second medical assessment is required, the Board shall provide the worker and the employer with a list of at least three medical practitioners selected from a roster, from among whom the worker and the employer, by agreement and within thirty days after receiving the list, may select a medical practitioner who shall conduct the medical assessment.

Idem

(16) If the worker and the employer fail to agree upon a medical practitioner to conduct the second medical assessment, the Board shall select a medical practitioner from a roster and, if possible, one who was not named on the list provided to the worker and the employer, and the medical practitioner selected shall conduct the medical assessment.

Idem

(17) If the Board considers it to be impractical to provide a list of medical practitioners under subsection (15) because of the nature of a worker's impairment, the Board shall appoint such medical practitioner to conduct the second medical assessment as the Board considers appropriate.

Notification  
of worker  
and employer

(18) The Board shall send a copy of the second medical assessment to the worker and the employer.

Board  
determination

(19) The Board shall forthwith determine the degree of a worker's permanent impairment,

- (a) after the expiry of the forty-five day period referred to in subsection (14) if a second medical assessment was not required; or
- (b) after it receives a copy of a second medical assessment if one was required.

Notice

(20) The Board shall give notice of its decision to the worker and the employer forthwith after determining the degree of a worker's permanent impairment.

Unanti-  
cipated  
deterioration

(21) A worker may apply to the Board for a redetermination of the degree of the worker's permanent impairment,

- (a) if the Board has determined that the worker has a permanent impairment; and
- (b) if the worker has suffered a significant deterioration of condition that was not anticipated at the time of the most recent medical assessment under this section.

(22) Subsections (5) to (20) apply to a redetermination as though it were an initial determination by the Board, with such modifications as the circumstances require.

Redetermination

(23) No worker may apply under subsection (21) until twelve months have elapsed from the most recent decision by the Board respecting the degree of permanent impairment of the worker.

Time for applying

(24) The Lieutenant Governor in Council, on the recommendation of the Board, may establish one or more rosters of medical practitioners who are qualified to conduct medical assessments under this section.

Roster of medical practitioners

(25) A medical practitioner who conducts an assessment under this section shall be paid such sum for services and expenses as the chairman of the Board may determine.

Remuneration of medical practitioners

(26) Subsections 83 (3) and (4) apply with necessary modifications to all medical practitioners who conduct medical assessments under this section.

Application of subss. 83 (3, 4)

**45a.**—(1) A worker who suffers injury resulting in permanent impairment or resulting in temporary disability for twelve continuous months is entitled to compensation for future loss of earnings arising from the injury.

Compensation for future loss of earnings

(2) An injured worker ceases to be eligible for compensation for future loss of earnings when the worker reaches sixty-five years of age.

Duration of compensation

(3) Subject to subsection (8), the amount of compensation payable to a worker for future loss of earnings arising from an injury is equal to 90 per cent of the difference between,

Amount of compensation

(a) the worker's net average earnings before the injury; and

(b) the net average earnings that the worker is likely to be able to earn after the injury in suitable and available employment.

(4) Notwithstanding clause 139 (2) (b), the amount of compensation payable under this section to a worker for future loss of earnings arising from an injury shall be adjusted in accordance with subsections (5) and (6).

Adjustment of amounts

(5) The amount of compensation calculated by the Board under subsection (3), (8) or (13) shall be adjusted in accordance with clause 139 (2) (b).

Idem



Idem

(6) The amount of compensation payable under this section in each year after the year in which the initial calculation is made by the Board shall be adjusted by applying the indexing factor to the amount of the previous year's compensation as adjusted under Part IV.

Earnings  
from suitable  
and available  
employment

(7) For the purposes of subsection (3), in determining the amount that a worker is likely to be able to earn in suitable and available employment, the Board shall have regard to,

- (a) the net average earnings, if any, of the worker at the time the Board determines compensation under this section;
- (b) any disability payments the worker may receive for the injury under the Canada Pension Plan or the Quebec Pension Plan;
- (c) the personal and vocational characteristics of the worker;
- (d) the prospects for successful medical and vocational rehabilitation of the worker;
- (e) what constitutes suitable and available employment for the worker; and
- (f) such other factors as may be prescribed in the regulations.

Election re:  
older workers

R.S.C. 1985,  
c. O-9

(8) A worker may elect to receive an amount equal to a full monthly pension for old age security under section 3 of the *Old Age Security Act* (Canada), including amendments thereto, instead of the amount of compensation determined under subsection (3) or (13) if the worker,

- (a) is at least fifty-five years of age when the Board determines or reviews the amount of the worker's compensation;
- (b) has not returned to work; and
- (c) is unlikely, in the opinion of the Board, to benefit from a vocational rehabilitation program which could help the worker return to work.

Supplement  
to compen-  
sation

(9) If a worker who is receiving compensation under this section is co-operating in a Board-authorized vocational or medical rehabilitation program,

- (a) that began before the date of the Board's review under clause (13) (a); or
- (b) that began within twelve months after a determination is made under subsection 45 (21) of an anticipated deterioration in the worker's condition,

the amount of compensation otherwise determined under this section shall be supplemented so that the total compensation payable to the worker while the worker is co-operating in the rehabilitation program is equal to 90 per cent of the worker's pre-injury net average earnings.

(10) Where possible, the Board shall determine the amount of compensation payable to a worker under this section,

Determina-  
tion of  
compensation

- (a) in the twelfth consecutive month during which the worker is temporarily disabled;
- (b) within one year after notice of the accident in which the worker was injured is given under section 20, if during that year the Board determines that the worker is permanently impaired; or
- (c) within eighteen months after notice of the accident in which the worker was injured is given under section 20, if the worker's medical condition precludes a determination within the time stated in clause (a) or (b), whichever applies.

(11) Clauses (10) (b) and (c) do not apply with respect to a worker who is permanently impaired by industrial disease.

Idem

(12) The Board may extend the time limits set out in subsection (10) in the case of a worker who is not receiving compensation under this Act and whose entitlement to compensation is in dispute.

Idem

(13) Where possible, the Board shall review its determination of the amount of compensation payable to a worker under this section,

Review of  
amount of  
compensation

- (a) in the twenty-fourth month after the date of its initial determination;
- (b) in the sixtieth month after the date of its initial determination; and
- (c) within twenty-four months after a reconsideration of the percentage of permanent impairment of a work-

er, under subsection 45 (21), results in a determination of increased permanent impairment of the worker,

but the Board shall not vary the amount of compensation payable as a result of a review unless the amount of the variation would be equal to at least 10 per cent of the amount of compensation being paid at the time of the review.

Payment of  
compensation

(14) Compensation for future loss of earnings is payable in monthly or other periodic payments except as provided in subsection (15).

Commutation  
of amount  
payable

(15) If, following the review under clause (13) (b) or (c), the amount of compensation determined to be payable to a worker under this section is 10 per cent or less of the amount of compensation payable for full loss of earnings, the Board may commute the periodic amount payable to the worker to a lump sum unless the worker elects to receive the compensation in periodic payments.

Benefits for  
loss of  
retirement  
income

**45b.**—(1) For the purpose of providing a worker who is receiving compensation under section 45a with a retirement pension, the Board shall set aside for the worker additional funds equal to 10 per cent of every payment made to the worker under section 45a.

Payments  
deemed to  
be made to  
worker

(2) Payments to the spouse or dependants of a worker made by the Board under section 50 out of funds otherwise payable to the worker under section 45a shall be deemed to be payments to the worker for the purposes of subsection (1).

Entitlement  
to retirement  
income

(3) Each worker on whose behalf the Board sets aside funds under subsection (1), upon reaching sixty-five years of age, shall receive a retirement pension under this section.

Survivor  
benefits

(4) If a worker dies before beginning to receive or while receiving a retirement pension under this section, the spouse and dependants of the worker shall receive such benefits as may be prescribed by regulation.

Exception

(5) Notwithstanding subsection (4), a spouse and dependants who receive compensation under section 36 in respect of a worker are not entitled to receive benefits under this section in respect of the worker.

Payment of  
retirement  
income

(6) A worker for whom funds are being set aside under subsection (1) may select the payment scheme for the worker's retirement pension from among the schemes and subject to the restrictions prescribed in the regulations.



(7) Notwithstanding subsection (6), if the annual pension to which a worker becomes entitled upon reaching sixty-five years of age is less than \$1,000, the Board shall pay the worker's retirement pension under this section as a lump sum. Idem

(8) Retirement pensions and other benefits payable to or in respect of a worker under this section shall be calculated on the basis of the funds set aside for the worker plus the accumulated investment income thereon. Calculation of pensions and benefits

(9) An employer that is individually liable to pay compensation under this Act shall pay the funds set aside under subsection (1) to the Board. Employer payment

(10) The Board shall establish a fund into which funds set aside under subsection (1) shall be deposited and shall invest the fund in accordance with such procedures and restrictions as may be set out in the regulations. Fund to be established

**16. Subsection 50 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 13, is repealed and the following substituted therefor:**

(1) Where a worker is entitled to compensation under this Act and the worker's spouse is entitled or the worker's dependants are entitled to support or maintenance under a court order, the Board shall divert such portion of the compensation payable to the worker in each periodic payment as is permitted under subsection (1a), Garnishment for family support

(a) in accordance with a garnishment notice issued by a court in Ontario; and

(b) to the extent of default or arrears accruing after the 1st day of April, 1985, under the court order.

(1a) Garnishment of compensation under subsection (1) is subject to the limits and procedures set out in subsections 7 (1) to (5) of the *Wages Act* and compensation payable under this Act, other than funds set aside under subsection 45b (1), shall be deemed to be wages for the purposes of that Act. R.S.O. 1980, c. 526 applies

**17.—(1) Clause 52 (1) (c) of the said Act is amended by striking out “disability” in the second line and inserting in lieu thereof “impairment”.**

**(2) Clause 52 (3) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 3, section 4, is amended by striking out “disability” in the fifth line and inserting in lieu thereof “impairment”.**

**18. Section 53 of the said Act is amended by striking out “without additional charge” in the fourth line.**

**19. The said Act is further amended by adding thereto the following sections:**

Vocational  
rehabilitation

**54a.—(1)** This section applies in respect of a worker who is receiving or has received benefits under section 40.

Early  
assessment

(2) Within forty-five days after notice of an accident under section 20 is filed, the Board shall contact a worker who has not returned to work, for the purpose of identifying the worker's need for vocational rehabilitation services.

Vocational  
rehabilitation  
services

(3) The Board shall provide a worker contacted under subsection (2) with vocational rehabilitation services if the Board considers it appropriate to do so.

Idem

(4) Vocational rehabilitation services provided under subsection (3) may include consultation, the provision of information and the planning and design of a vocational rehabilitation program.

Second  
contact re:  
assessment

(5) The Board shall offer a vocational rehabilitation assessment to every worker,

(a) who has not returned to the worker's pre-injury employment or to alternative employment of a nature and at earnings comparable to the pre-injury employment within six months after notice of the accident under section 20 is filed;

(b) who is not receiving vocational rehabilitation services; and

(c) who is not receiving or has not received a vocational rehabilitation program.

Idem

(6) If a worker is medically unable to undergo an assessment when contacted by the Board under subsection (5), the Board shall make the offer of assessment within a reasonable time after the worker becomes medically able to undergo assessment.

Assessment

(7) The Board shall provide a vocational rehabilitation assessment to a worker who accepts an offer and the assessment may include an evaluation of the worker's functional abilities, vocational skills, aptitude, educational attainment, literacy and language skills.

(8) The Board shall give written notice to the worker and the employer forthwith of the results of a vocational rehabilitation assessment conducted under subsection (7) and shall send the worker a copy of the assessment.

Results of  
assessment

(9) The Board, after consultation with the worker and having regard to the results of an assessment under subsection (7), shall determine within thirty days after the Board receives the assessment results whether the worker needs a vocational rehabilitation program and shall give written notice to the worker and the employer of its determination.

Determi-  
nation re:  
vocational  
rehabilitation  
program

(10) If the Board determines, as a result of an assessment or otherwise, that a worker requires a vocational rehabilitation program, the Board in consultation with the worker and, if possible, with the employer and the worker's physician shall design and provide one.

Vocational  
rehabilitation

(11) A vocational rehabilitation program may include vocational training, language training, general skills upgrading, refresher courses, employment counselling (including training in job search skills and in the identification of employment opportunities), assistance in seeking employment and assistance in adapting the workplace of an employer to accommodate the worker.

Particulars of  
program

(12) If a worker's vocational rehabilitation program includes assistance in seeking employment, the Board shall assist the worker to search for employment for a period of up to six months after the worker is available for employment and the Board may extend its assistance for a further period of up to six months.

Entitlement  
to job search  
assistance

#### OBLIGATION TO RE-EMPLOY

**54b.**—(1) The employer of a worker who as a result of an injury has been unable to work and who, on the date of the injury, had been employed continuously for at least one year by the employer shall offer to re-employ the worker in accordance with this section.

Obligation to  
re-employ

(2) The Board shall determine,

Determi-  
nation re  
return to  
work

- (a) with respect to an injured worker who has not returned to work with the pre-injury employer, whether the worker is medically able to perform the essential duties of the worker's pre-injury employment or is medically able to perform suitable work; and



- (b) with respect to an injured worker who the Board has previously determined to be medically able to perform suitable work, whether the worker is medically able to perform the essential duties of the worker's pre-injury employment.

Board to  
notify  
employer

(3) The Board shall notify the employer upon determining that the worker is able to perform the essential duties of the worker's pre-injury employment or is medically able to perform suitable work.

Obligation to  
re-employ

(4) Upon receiving notice from the Board that a worker is able to perform the essential duties of the worker's pre-injury employment, the employer shall offer to reinstate the worker in the position the worker held on the date of injury or offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on that date.

Idem

(5) Upon receiving notice from the Board that a worker, although unable to perform the essential duties of the worker's pre-injury employment, is medically able to perform suitable work, the employer shall offer the worker the first opportunity to accept suitable employment that may become available with the employer.

Impaired  
worker

(6) In order to fulfil the employer's obligations under this section, the employer shall accommodate the work or the workplace to the needs of a worker who is impaired as a result of the injury to the extent that the accommodation does not cause the employer undue hardship.

Notification  
of Board

(7) An employer shall give written notice to the Board of the particulars of the way in which the employer intends to accommodate the work or the workplace to the needs of a worker under subsection (6).

Duration of  
obligation

(8) An employer is obligated under this section until the day that is the earliest of,

- (a) two years after the date of the injury to the worker;
- (b) one year after the date the Board notifies the employer that the worker is medically able to perform the essential duties of the worker's pre-injury employment; and
- (c) the date the worker reaches sixty-five years of age.

(9) Employers engaged primarily in construction shall comply with such requirements to re-employ workers who perform construction work as may be prescribed in the regulations and subsections (4) to (8) do not apply in respect of such employers in relation to such workers.

Construction  
industry  
requirements

(10) An employer who, having re-employed a worker in accordance with this section, terminates the employment within six months, is presumed, unless the contrary is shown, not to have fulfilled the employer's obligations under this section.

Termination  
of re-  
employment

(11) A worker may apply to the Board for a determination whether the employer has fulfilled the employer's obligations to the worker under this section and the Board shall make the determination.

Determi-  
nation re:  
employer  
compliance

(12) The Board is not required to consider an application under subsection (11) by a worker who has been re-employed and whose employment is terminated within six months if it is made more than three months after the date of termination of employment.

Limitation  
period

(13) If the Board finds that an employer has not fulfilled the employer's obligations under this section, the Board may,

Consequences  
of non-  
compliance

- (a) levy a penalty on the employer of a maximum of the amount of the worker's net average earnings for the year preceding the injury; and
- (b) make payments to the worker for a maximum of one year as if the worker were entitled to compensation under section 40, and subsections 40 (2) and (3) apply to the payments with such modifications as the circumstances may require.

(14) If this section conflicts with a collective agreement that is binding upon the employer and if the obligations of the employer under this section in respect of a worker afford the worker greater re-employment terms in the circumstances than the terms available to the worker under the collective agreement, this section prevails over the collective agreement.

Conflict with  
collective  
agreement

(15) Subsection (14) does not operate to displace the seniority provisions of a collective agreement.

Idem

(16) This section does not apply in respect of,

Application

- (a) employers who regularly employ fewer than twenty workers; or

- (b) such classes or subclasses of employers and workers as may be exempted by the regulations.

Emergency  
workers

(17) If a worker is injured while engaged in employment described in subsection 1 (2) or (4), the worker's employer, other than the employer described in subsection 1 (2) or (4), shall be deemed to be the employer for the purposes of this section.

Idem

(18) If an employer re-employs a worker to whom subsection (17) applies, the employer described in subsection 1 (2) or (4) shall pay the costs incurred in complying with subsection (6).

**20. Section 69 of the said Act is amended by adding thereto the following subsections:**

Idem

(1a) Without restricting the generality of subsection (1), the Board, subject to the approval of the Lieutenant Governor in Council, may make regulations,

- (a) prescribing, for the purposes of subsections 36 (13) and 40 (3), clause 45a (7) (b) and subsection 135 (9), the way in which payments received under the Canada Pension Plan and the Quebec Pension Plan are to be included in the calculation of compensation, of the amount that a worker is able to earn or of the sum of a supplement and an award, as the case may be;
- (b) establishing criteria for determining the average earnings of an apprentice, learner or full-time or part-time student for the purposes of subsection 43 (6);
- (c) establishing, for the purposes of medical assessments under section 45, a rating schedule setting out the degree of permanent impairment for specified types of permanent impairment and setting out criteria for assessing the degree of permanent impairment of other types of permanent impairment;
- (d) establishing criteria for assessing the personal and vocational characteristics of a worker, for the purposes of clause 45a (7) (c);
- (e) establishing criteria for determining what constitutes suitable and available employment for a worker, for the purposes of clause 45a (7) (e);



- (f) prescribing factors to be considered by the Board for the purposes of clause 45a (7) (f);
- (g) governing pensions payable to workers, their spouses and their dependants under section 45b;
- (h) governing the investment of amounts in, and payments out of, the fund established under subsection 45b (10);
- (i) exempting classes or subclasses of employers or workers from the application of section 54b;
- (j) establishing criteria for determining the essential duties of a position, for the purpose of subsection 54b (2);
- (k) establishing criteria for determining what constitutes alternative employment of a nature and at earnings comparable to a worker's pre-injury employment, for the purpose of subsection 54b (4);
- (l) establishing criteria for determining what constitutes suitable employment, for the purpose of subsection 54b (5);
- (m) governing the requirements for re-employing workers, for the purpose of subsection 54b (9);
- (n) establishing criteria for determining how many workers are regularly employed by an employer, for the purpose of clause 54b (16) (a).

(1b) For the purposes of clause (1a) (e), in establishing criteria for determining what constitutes suitable and available employment for a worker, the Board shall have regard to, Idem

- (a) the fitness of the worker to perform the work;
- (b) the health and safety consequences to the worker in working in the environment in which the work is performed in light of the impairment;
- (c) the existence and location of potential employment opportunities for the worker in the labour market in which the worker is expected to be employed; and
- (d) the likelihood of the worker securing employment.

**21.—**(1) Clause 71 (3) (h) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 24, is amended by inserting after “disabled” in the fifth line “or impaired”.

(2) Clause 71 (3) (i) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 24, is amended by inserting after “disabled” in the fifth line “or impaired”.

**22.—**(1) Clause 75 (2) (d) of the said Act is amended by inserting after “disability” in the first line “or impairment”.

(2) Clause 75 (2) (e) of the said Act is amended by striking out “disability” in the first line and inserting in lieu thereof “impairment”.

(3) Clause 75 (2) (g) of the said Act is repealed and the following substituted therefor:

(g) the future loss of earnings by reason of any injury.

(4) Subsection 75 (2) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 58, section 27, is further amended by adding thereto the following clause:

(n) whether an employer has fulfilled the employer's obligation under section 54b to reinstate or re-employ a worker.

**23.** Section 86p of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 32, is amended by adding thereto the following subsection:

Application  
of subss.  
83 (3, 4)

(6a) Subsections 83 (3) and (4) apply with necessary modifications to the chairman, vice-chairman and other members of the Panel and to the officers and employees of the Panel.

**24.** Section 86q of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 32, is amended by adding thereto the following subsection:

Application  
of s. 83

(4) Section 83 applies with necessary modifications to the officers and employees of the Office of the Worker Adviser.

**25.** Section 86r of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 32, is amended by adding thereto the following subsection:

Application  
of s. 83

(3) Section 83 applies with necessary modifications to the officers and employees of the Office of the Employer Adviser.

**26.—(1)** Subsection 122 (1) of the said Act is amended by striking out “disabled” in the second line and inserting in lieu thereof “impaired” and by striking out “disablement” in the seventh line and inserting in lieu thereof “impairment”.

(2) Subsection 122 (11) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 58, section 4, is further amended by striking out “disability” in the third line and inserting in lieu thereof “impairment” and by striking out “disablement” in the last line and inserting in lieu thereof “impairment”.

**27.** Section 123 of the said Act is amended by adding thereto the following subsection:

(3a) Subsections 83 (3) and (4) apply with necessary modifications to directors, officers and employees of an association and to volunteers engaging in activities on behalf of an association.

Application  
of subss.  
83 (3, 4)

**28.** Part III of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 37 and amended by 1985, chapter 3, sections 5, 6, 7, 8 and 9, is repealed and the following substituted therefor:

### PART III

#### TRANSITIONAL PROVISIONS

**132.** In this Part,

Definitions

“pre-1985 Act” means this Act as it read on the 31st day of March, 1985, as amended by the Statutes of Ontario, 1984, chapter 58, section 37 and 1985, chapter 3, sections 6, 7, 8 and 9;

“pre-1985 injury” means,

- (a) a personal injury by accident or an industrial disease that occurred before the 1st day of April, 1985, or
- (b) death that occurred before the 1st day of April, 1985, resulting from an injury by accident or an industrial disease;

“pre-1989 Act” means this Act as it read immediately before the coming into force of this definition, excluding Part III thereof;



“pre-1989 injury” means a personal injury by accident or an industrial disease that occurred on or after the 1st day of April, 1985 and before the coming into force of section 45a of this Act.

Pre-1985 Act  
continues to  
apply

**133.—**(1) Except as provided in this section, the pre-1985 Act continues to apply to pre-1985 injuries.

Exception

(2) Subsections 43 (5), (5a), (5b) and (5c) of the pre-1985 Act cease to apply to pre-1985 injuries on the day this section comes into force.

Pre-1989 Act  
continues to  
apply

**134.—**(1) Except as provided in this section, the pre-1989 Act continues to apply to pre-1989 injuries.

Exception

(2) Subsections 45 (5), (6), (7), (8) and (9) of the pre-1989 Act cease to apply to pre-1989 injuries on the day this section comes into force.

#### PERMANENT PARTIAL DISABILITY SUPPLEMENTS

Partial  
disability  
supplements

**135.—**(1) In this section,

“amount awarded for permanent partial disability” means the amount awarded for permanent partial disability under,

- (a) subsection 43 (1) of the pre-1985 Act, with respect to a pre-1985 injury, and
- (b) subsection 45 (1) of the pre-1989 Act, with respect to a pre-1989 injury;

“worker” means a worker who is permanently disabled as a result of a pre-1985 injury or a pre-1989 injury;

Temporary  
supplement

(2) Subject to subsections (9) and (10), the Board shall give a supplement to a worker who, in the opinion of the Board, is likely to benefit from a vocational rehabilitation program which could help to increase the worker's earning capacity to such an extent that the sum of the worker's earning capacity after vocational rehabilitation and the amount awarded for permanent partial disability approximates the worker's average or net average earnings, as the case may be, before the worker's injury.

Idem

(3) A supplement under subsection (2) is payable for the period during which the worker participates in a Board-approved vocational rehabilitation program.

(4) Subject to subsections (8), (9) and (10), the Board shall give a supplement to a worker, Permanent supplement

- (a) who, in the opinion of the Board, is not likely to benefit from a vocational rehabilitation program in the manner described in subsection (2); or
- (b) whose earning capacity after a vocational rehabilitation program is not increased to the extent described in subsection (2) in the opinion of the Board.

(5) A supplement under subsection (4) for a worker described in clause (4) (a) becomes payable as of the later of, Duration of supplement

- (a) the day this section comes into force; or
- (b) the day the Board determines the worker has a permanent disability.

(6) A supplement under subsection (4) for a worker described in clause (4) (b) becomes payable as of the latest of, Idem

- (a) the day this section comes into force;
- (b) the day the Board determines the worker has a permanent disability; or
- (c) the day the worker ceases to participate in a vocational rehabilitation program.

(7) A supplement under subsection (4) shall continue until the worker becomes eligible for old age security benefits. Idem

(8) The amount of a supplement under subsection (4) shall not exceed the amount of a full monthly pension for old age security under section 3 of the *Old Age Security Act* (Canada), including amendments thereto. Amount of supplement  
R.S.C. 1985,  
c. O-9

(9) The amount of a supplement under this section for a worker with a pre-1985 injury shall be calculated so that the sum of the supplement, the amount awarded for permanent partial disability and 75 per cent of the worker's average earnings, if any, after the injury equals 75 per cent of the worker's pre-injury average earnings. Idem

(10) The amount of a supplement under this section for a worker with a pre-1989 injury shall be calculated so that the sum of the supplement, the amount awarded for permanent partial disability and 90 per cent of the worker's net average Idem

earnings, if any, after the injury equals 90 per cent of the worker's pre-injury net average earnings.

C.P.P. and  
Q.P.P.  
payments

(11) In calculating the amount of a supplement under this section, the Board shall have regard to the effect of inflation on the worker's pre-injury earning rate and to any payments the worker receives under the Canada Pension Plan or the Quebec Pension Plan with respect to a disability arising from the injury.

Form of  
payment

(12) A supplement under this section shall be a monthly or other periodic payment.

Recalculation

(13) The Board shall review a supplement given under subsection (4) in the twenty-fourth month following the award and in the sixtieth month following the award and recalculate the amount of the supplement in accordance with subsections (9) and (10).

**29.—(1)** Subsection 141 (1) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 17, section 5, is amended by striking out “(3)” in the second line.

(2) Subsection 141 (2) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 17, section 5, is amended by striking out “or under subsection 133 (3), (4), (5) or 43 (9) as continued by section 132” in the second and third lines.

Commence-  
ment

**30.—(1)** Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

Idem

(2) Sections 1 to 27 and section 29 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**31.** The short title of this Act is the *Workers' Compensation Amendment Act, 1989*.



## CHAPTER 48

### An Act to restrict Smoking in Workplaces

*Assented to July 26th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

#### 1. In this Act,

Definitions

“employee” includes a person whose services are contracted for by an employer;

“employer” means a person who employs one or more employees or who contracts for the services of one or more persons;

“enclosed workplace” means an enclosed building or structure in which an employee works and includes a shaft, tunnel, caisson or similar enclosed space;

“smoking” includes carrying a lighted cigar, cigarette or pipe and “smoke” has a corresponding meaning.

#### 2.—(1) No person shall smoke in an enclosed workplace.

Prohibition

#### (2) Subsection (1) does not apply so as to prohibit smoking,

Exception

- (a) in a smoking area designated by an employer under subsection 3 (1);
- (b) in an area used primarily by the public;
- (c) in an area used primarily for lodging; or
- (d) in a private dwelling.

#### 3.—(1) An employer may designate one or more locations in an enclosed workplace as smoking areas.

Designated smoking areas

#### (2) The total space for designated smoking areas at an enclosed workplace shall not exceed 25 per cent of the total

Maximum area permitted

floor area of the enclosed workplace, exclusive of the places described in clauses 2 (2) (b), (c) and (d).

Consultation  
required

(3) An employer shall consult with the joint health and safety committee or the health and safety representative, if any, at the workplace before establishing a designated smoking area.

Definitions

(4) In subsection (3),

R.S.O. 1980,  
c. 321

“health and safety representative” means a health and safety representative selected under the *Occupational Health and Safety Act*;

“joint health and safety committee” means a joint health and safety committee established under section 8 of the *Occupational Health and Safety Act* or a similar committee or arrangement, program or system in which employees participate.

Signs  
required

**4.—**(1) An employer shall post and keep posted such signs as may be prescribed respecting smoking in a workplace.

Idem

(2) An employer shall post signs that identify designated smoking areas in a workplace.

Obligation of  
employer

**5.—**(1) An employer shall make every reasonable effort to ensure that no person contravenes subsection 2 (1).

Idem

(2) An employer shall make every reasonable effort to accommodate employees who request that they work in a place separate from a designated smoking area.

Inspection  
and  
enforcement

**6.—**(1) An inspector appointed under the *Occupational Health and Safety Act* may inspect enclosed workplaces to determine whether this Act is being complied with.

Powers of  
inspector

(2) For the purpose of subsection (1), an inspector,

- (a) may enter an enclosed workplace, other than a private dwelling, at any time without warrant or notice;
- (b) may require the production of any drawings, specifications or floor plans for an enclosed workplace, other than a private dwelling, and may inspect, examine and copy them; and
- (c) may make inquiries of any person who is or was in a workplace.

(3) No person shall hinder, obstruct or interfere with an inspector in the execution of the inspector's duties under this section.

Obstruction

7.—(1) If an inspector finds that an employer is not complying with section 4 or 5, the inspector may order the employer or a person whom the inspector believes to be in charge of the workplace to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies.

Orders by inspectors

(2) An order made under subsection (1) shall indicate generally the nature and, when appropriate, the location of the non-compliance.

Contents of order

(3) An inspector is not required to hold or afford to an employer or another person an opportunity for a hearing before making an order under subsection (1).

No hearing required before making order

(4) An order under subsection (1) may be appealed.

Appeals from order of an inspector

(5) Section 32 of the *Occupational Health and Safety Act* applies with necessary modifications to an appeal of an order under subsection (1).

Idem  
R.S.O. 1980,  
c. 321

8.—(1) No employer or person acting on behalf of an employer,

Prohibition

(a) shall dismiss or threaten to dismiss an employee;

(b) shall discipline or suspend an employee or threaten to do so;

(c) shall impose a penalty upon an employee; or

(d) shall intimidate or coerce an employee,

because the employee has acted in accordance with or has sought the enforcement of this Act.

(2) Subsections 24 (2) to (8) of the *Occupational Health and Safety Act* apply with necessary modifications when an employee complains that subsection (1) has been contravened.

Application of  
R.S.O. 1980,  
c. 321

9.—(1) Every person who contravenes subsection 2 (1) or 6 (3) is guilty of an offence.

Offence.



Idem	(2) Every employer who fails to comply with section 4 or 5 or an order made under subsection 7 (1) or who contravenes subsection 8 (1) is guilty of an offence.
Derivative	(3) Every person who causes, authorizes, permits or participates in an offence under subsection (2) is guilty of an offence.
Penalty	(4) On conviction of an offence,  (a) every person who is not an employer is liable to a fine of not more than \$500; and  (b) every employer is liable to a fine of not more than \$25,000.
Regulations	<b>10.</b> The Lieutenant Governor in Council may make regulations prescribing signs and providing for their use.
Conflict with other Acts, etc.	<b>11.</b> —(1) In the event of conflict between this Act and another Act or a regulation or a municipal by-law respecting smoking in a workplace, the provision that is the most restrictive of smoking prevails.
Municipal by-laws	(2) Nothing in this Act prevents a municipality from passing by-laws respecting smoking in workplaces.
Rights of employers, employees	(3) Nothing in this Act derogates from the right of an employer to prohibit smoking in a workplace or from the rights of an employee to a smoke-free workplace.
Binding on the Crown	<b>12.</b> This Act binds the Crown.
Commencement	<b>13.</b> This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
Short title	<b>14.</b> The short title of this Act is the <i>Smoking in the Workplace Act, 1989</i> .

## CHAPTER 49

### **An Act respecting Funeral Directors and Establishments**

*Assented to October 16th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

#### **1. In this Act,**

Definitions

“beneficiary” means a person for whom funeral services or supplies, or both, are to be provided under a contract or prepaid contract;

“Board” means the Board of Funeral Services;

“cemetery” means a cemetery within the meaning of the *Cemeteries Act, 1989*; 1989, c. 50

“Compensation Fund” means the Prepaid Funeral Services Compensation Fund established under the regulations;

“contract” means an agreement wherein a person provides or agrees to provide funeral services or supplies, or both or for the transportation of a dead human body, and includes prepaid contracts;

“depository” means a chartered bank, loan or trust company, Province of Ontario Savings Office or a credit union as defined in the *Credit Unions and Caisses Populaires Act*;

R.S.O. 1980,  
c. 102

“Director” means a director appointed under the *Ministry of Consumer and Commercial Relations Act*;

R.S.O. 1980,  
c. 274

“disbursements” means payments actually made by a funeral director or a person who operates a funeral establishment on behalf of a purchaser of funeral services or supplies, or both;

“embalming” means the preservation and disinfection of all or part of a dead human body by any means other than by refrigeration;

“equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“funeral” means a rite or ceremony in connection with the death of a person where the body is present;

“funeral director” means an individual who provides or directs the providing of funeral services;

“funeral establishment” means premises where funeral services are supplied;

“funeral services” means the care and preparation of dead human bodies and the co-ordination of rites and ceremonies with respect to dead human bodies, but does not include services provided by a cemetery or crematorium owner under the *Cemeteries Act, 1989*;

1989, c. 50

“funeral supplies” means goods that are used in connection with the care and preparation of dead human bodies or the disposition of dead human bodies;

“income” means the interest or money earned, including the compounding thereof, by the investment of funds received under a prepaid contract;

“licence” means a licence issued under this Act and “licensed” has a corresponding meaning;

“Minister” means the Minister of Consumer and Commercial Relations;

“prearrangement” means an arrangement for the provision of specific funeral services, supplies or transportation of a dead human body on the death of a person who is alive at the time the arrangement is made;

“prepaid contract” means an agreement whereby a person contracts with a purchaser to provide or make provision for funeral services, funeral supplies, or both, or for the transportation of a dead human body, including disbursements, upon the death of a beneficiary, if any payment for the contract is made prior to the death of the beneficiary or the purchaser enters into an insurance contract or plan under which a licensee is to receive directly or indirectly the pro-



ceeds of the insurance policy upon the death of the beneficiary;

“prepayment” means the payment or the guarantee of a payment pursuant to a prepaid contract;

“prepayment funds” means the money deposited in trust under the provisions of this Act and the income therefrom and includes the proceeds of an insurance policy received by a licensee;

“prescribed” means prescribed by the regulations;

“Registrar” means the Registrar of the Board;

“regulations” means regulations made under this Act;

“transfer service” means a service to the public with respect to the disposition of dead human bodies, including the transportation of dead human bodies and the filling out of the necessary documentation with respect to the disposition of dead human bodies;

“Tribunal” means The Commercial Registration Appeal Tribunal.

**2.—(1)** There shall be a Registrar appointed by the Board for the purposes of this Act. Registrar

(2) The Registrar may exercise the powers and shall perform the duties conferred or imposed on the Registrar by or under this Act under the supervision of the Board. Powers of Registrar

(3) The Registrar shall maintain one or more registers in which is entered, Registers

- (a) the name of every person licensed under this Act;
- (b) any conditions and limitations imposed on a licence by the Registrar, a Committee or the Tribunal;
- (c) the fact and date of each revocation, suspension, cancellation or termination of a licence;
- (d) the fact and amount of each fine imposed by the Discipline Committee, except if the Discipline Committee directs that no entry with respect to a fine be made;

- (e) the fact of each reprimand made by the Discipline Committee, except if the Discipline Committee directs that no entry with respect to the reprimand be made; and
- (f) such other information in addition to that set out in clauses (a) to (e) as is prescribed.

Inspection

(4) Any person has the right, during normal business hours, to inspect the registers maintained by the Registrar.

Copies

(5) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers maintained by the Registrar.

Board  
continued

**3.—(1)** The Board of Funeral Services, a body corporate, is continued as a corporation without share capital.

Principal  
object

(2) The principal object of the Board is to regulate the practices of funeral directors and persons who operate funeral establishments and transfer services in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

Additional  
objects

(3) For the purpose of carrying out its principal object, the Board has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among funeral directors and persons who operate funeral establishments and transfer services.
2. To establish, maintain and develop standards of qualification and standards of practice for funeral directors and persons who operate funeral establishments and transfer services.
3. To establish, maintain and develop standards of professional ethics among funeral directors and persons who operate funeral establishments and transfer services.
4. To administer the Compensation Fund.
5. To oversee and inspect trust accounts that funeral establishments and transfer services are required by law to establish or maintain.
6. To mediate complaints between consumers and licensees.

7. To establish and develop standards for funeral establishments.
8. To perform such other duties and exercise such other powers as are imposed or conferred on the Board by or under any Act.

(4) For the purpose of carrying out its objects, the Board has the capacity and the powers of a natural person.

Capacity and  
powers of  
Board

(5) The Board shall,

Duties of  
Board

- (a) review the operation of this Act and the regulations and make recommendations to the Minister thereon;
- (b) approve or set courses of study and examinations for the qualification of applicants for licences; and
- (c) carry out such duties as are prescribed.

4.—(1) The Board shall be composed of the following members appointed by the Lieutenant Governor in Council:

Composition

1. A prescribed number of funeral directors, one of whom,
  - i. is not licensed to operate a funeral establishment,
  - ii. is not a director of a corporation that is licensed to operate a funeral establishment, and
  - iii. does not direct the operation of a funeral establishment.
2. A prescribed number of persons who are not funeral directors.

(2) The members of the Board shall be appointed to hold office for a term not exceeding three years and may be reappointed for further successive terms, but shall not be appointed or reappointed for more than six successive years.

Term of  
office

(3) A vacancy on the Board caused by the death, resignation, removal or incapacity to act of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the unexpired portion of the term of office of such member.

Vacancy



Quorum (4) Five members of the Board, at least two of whom shall be members appointed under paragraph 2 of subsection (1), constitute a quorum.

Officers (5) The Board shall appoint a chairperson and vice-chairperson and such other officers as are considered necessary from among the members of the Board.

Expenses and remuneration of members of Board (6) The members of the Board,  
(a) appointed under paragraph 1 of subsection (1) shall be paid by the Board such expenses and remuneration as are prescribed; and  
(b) appointed under paragraph 2 of subsection (1) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.

Staff (7) The Board may employ such employees and retain such assistance as is necessary to perform the work of the Board and may determine their salary, remuneration and terms and conditions of employment.

Meetings of Board (8) The Board shall meet at least four times a year.

Continuation of Board members (9) The members of the Board who were in office immediately before the coming into force of this Act are continued in office until the expiration of their terms or until their offices otherwise become vacant.

Annual report (10) The Board shall deliver to the Minister each year an annual report on the affairs of the Board and on the operation of the Compensation Fund.

Idem (11) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Powers of Minister **5.** The Minister may, in addition to any other powers and duties conferred on the Minister by or under any Act,

(a) review the activities of the Board;

(b) request the Board to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

- (c) advise the Board with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Board to implement policies and to enforce its by-laws and procedures.

**6.—(1)** The Board may pass by-laws relating to the administrative and domestic affairs of the Board not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing, By-laws

1. specifying the seal of the Board;
2. providing for the execution of documents by the Board;
3. respecting banking and finance;
4. fixing the financial year of the Board and providing for the audit of the accounts and transactions of the Board;
5. respecting the calling, holding and conducting of meetings of the Board and committees of the Board and the duties of members of the Board and committees of the Board;
6. providing for a code of ethics;
7. delegating to the Executive Committee such powers and duties of the Board as are set out in the by-laws, other than the power to make, amend or revoke regulations and by-laws;
8. respecting the calling, holding and conducting of meetings of licensees;
9. providing for the use of forms;
10. providing procedures for the making, amending and revoking of the by-laws;
11. respecting management of the property of the Board;
12. providing for the appointment, composition, powers and duties of committees in addition to those committees established under subsection 7 (1);

13. respecting the application of the funds of the Board and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
14. respecting membership of the Board in other organizations, the payment of annual assessments and provision for representatives at meetings;
15. respecting the appointment of inspectors by the Registrar for the purposes of this Act;
16. providing for meetings of the Board and committees, except in a proceeding in respect of a licence, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of the Board or committee participating in a meeting in accordance with such by-law shall be deemed to be present in person at the meeting;
17. providing that the Board or a committee may act upon a resolution consented to by the signatures of all members of the Board or the committee except in a proceeding in respect of a licence, and a resolution so consented to in accordance with such a by-law is as valid and effective as if passed at a meeting of the Board or the committee duly called, constituted and held for that purpose;
18. providing for the payment of necessary expenses of the Board and committees of the Board in the conduct of their business;
19. providing for the Board to enter into arrangements on behalf of licensees with respect to the bonding of licensees and requiring the payment and remittance of premiums in connection therewith, setting levies that shall be paid by licensees and exempting licensees or any class thereof from all or any part of such levy;
20. providing for the establishment of group insurance plans, other than for professional liability, in which licensees may participate on a voluntary basis;
21. regarding such other matters as are entailed in carrying on the business of the Board.



(2) A copy of the by-laws made under subsection (1) and amendments thereto, Distribution of by-laws

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each licensee; and
- (c) shall be available for public inspection in the office of the Board.

(3) At any time before or after receiving a copy of a by-law made under subsection (1), the Minister may, by an order in writing, revoke or amend the by-law. Minister may revoke or amend by-laws

(4) Despite subsection (3), a by-law is effective until so revoked or amended by the Minister and no act done or right acquired under any such by-law before revocation or amendment by the Minister is prejudicially affected by the revocation or amendment. Idem

**7.—**(1) The Board shall establish and appoint the following committees: Establishment of committees

1. Executive Committee.
2. Licensing Committee.
3. Complaints Committee.
4. Discipline Committee.
5. Compensation Fund Committee.

(2) The Board may establish such other committees in addition to those established under subsection (1) as the Board from time to time considers necessary. Idem

(3) If one or more vacancies occur in the membership of a committee, the members remaining constitute the committee so long as their number is not fewer than a quorum of the committee. Vacancies

**8.—**(1) The Executive Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1). Executive Committee

(2) The Board shall name one member of the Executive Committee to be chairperson. Chairperson

- Quorum** (3) Two members of the Executive Committee constitute a quorum.
- Powers of Executive Committee** (4) The Board may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Board, other than to make, amend or revoke a by-law.
- Urgent matters** (5) Subject to ratification by the Board at its next ensuing meeting, the Executive Committee may take action upon any other matter that requires immediate attention between meetings of the Board, other than to make, amend or revoke a by-law.
- Licensing Committee** **9.**—(1) The Licensing Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1).
- Chairperson** (2) The Board shall name one member of the Licensing Committee to be chairperson.
- Quorum** (3) Two members of the Licensing Committee constitute a quorum.
- Complaints Committee** **10.**—(1) The Complaints Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1).
- Chairperson** (2) The Board shall name one member of the Complaints Committee to be chairperson.
- Quorum** (3) Two members of the Complaints Committee constitute a quorum.
- Discipline Committee** **11.**—(1) The Discipline Committee shall be composed of four members of the Board, two of whom shall be persons appointed under paragraph 2 of subsection 4 (1).
- Chairperson** (2) The Board shall name one member of the Discipline Committee to be chairperson.
- Quorum** (3) Three members of the Discipline Committee constitute a quorum.
- Majority vote** (4) All disciplinary decisions of the Discipline Committee require the vote of a majority of the members of the Discipline Committee present at the hearing.

(5) If the Discipline Committee commences a hearing and a member of the Discipline Committee is unable to continue to act, the remaining members may complete the hearing despite the absence of the member.

Disability of member

**12.**—(1) The Compensation Fund Committee shall be composed of three persons who are members of the Board, two of whom shall be persons appointed under paragraph 2 of subsection 4 (1).

Compensation Fund Committee

(2) The Board shall name one member of the Compensation Fund Committee to be chairperson.

Chairperson

(3) Two members of the Compensation Fund Committee constitute a quorum.

Quorum

**13.**—(1) The Licensing Committee shall consider all matters that are referred to it by the Registrar under section 22.

Powers and duties of Licensing Committee

(2) The Licensing Committee may make recommendations to the Registrar with respect to,

Recommendations

- (a) the eligibility of an applicant for a licence or a renewal of a licence;
- (b) issuing or refusing to issue a licence to an applicant for a licence or a renewal of a licence;
- (c) issuing a licence or a renewal of a licence to an applicant subject to conditions;
- (d) suspending or revoking the licence of a licensee;
- (e) the desirability of requiring an applicant for a licence or a renewal of a licence or a licensee to take and pass such additional training or part thereof that may be prescribed; or
- (f) exempting an applicant for a license or a renewal of a licence or a licensee from any licensing requirement.

**14.**—(1) The Complaints Committee shall consider and investigate complaints regarding the conduct or actions of any licensee, but no action shall be taken by the Complaints Committee under subsection (2) unless,

Duties of Complaints Committee

- (a) a written complaint has been filed with the Registrar and the licensee whose conduct or actions are being investigated has been notified of the com-



plaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the licensee may wish to make concerning the matter; and

- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

(2) The Complaints Committee in accordance with the information it receives may,

- (a) consider all or part of the matter;
- (b) direct that all or part of the matter be referred to the Discipline Committee; and
- (c) subject to subsection (9), take or recommend such action that it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws.

Decisions  
and reasons

(3) The Complaints Committee shall advise the Registrar in writing of the action it proposes to take or recommend and its reasons therefor.

Notice

(4) Subsections (3) and (6) do not apply to a matter that is referred to the Discipline Committee.

Hearing

(5) The Complaints Committee is not required to hold a hearing or to afford any person an opportunity for a hearing or to make oral submissions before it prior to it taking action or making a recommendation under this section.

Notice

(6) The Registrar shall send to the complainant and to the person complained against by prepaid first class mail a copy of the proposal of the Complaints Committee and its reasons therefor, if any, together with notice that informs the person to whom it is sent that the person is entitled to a hearing by the Tribunal if the person mails or delivers to the Registrar and to the Tribunal, within fifteen days after the notice is served on the person, notice in writing requiring a hearing and the person may so require such a hearing.

No hearing

(7) If a complainant or the person complained against does not require a hearing by the Tribunal, the Complaints Committee may carry out the proposal stated in the notice to the complainant or the person complained against.

(8) If the complainant or the person complained against requires a hearing, the Tribunal shall appoint a time for and hold a hearing. Hearing

(9) After holding a hearing, the Tribunal may by order direct the Complaints Committee to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Complaints Committee ought to take in accordance with this Act and the regulations and, for such purposes, the Tribunal may substitute its opinion for that of the Complaints Committee. Order

(10) The Tribunal may attach such conditions to its order as it considers proper to give effect to the purposes of this Act. Conditions

(11) The Registrar, the person who required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. Parties

**15.** Despite subsection 14 (1), the Board or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a funeral director. Reference by Board or Executive Committee

**16.—(1)** The Discipline Committee shall, Duties of Discipline Committee

- (a) when so directed by the Board, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a funeral director;
- (b) hear and determine matters referred to it by the Board, Registrar, Executive Committee or Complaints Committee under this Act with respect to funeral directors; and
- (c) perform such other duties as are assigned to it by the Board.

(2) A funeral director may be found guilty of professional misconduct by the Discipline Committee if, Professional misconduct

- (a) the funeral director has been found guilty of an offence that is relevant to the funeral director's suitability to practise as a funeral director, upon proof of such conviction; or
- (b) the funeral director has been guilty in the opinion of the Discipline Committee of professional misconduct as prescribed.

Incompetence (3) The Discipline Committee may find a funeral director to be incompetent if in its opinion,

- (a) the funeral director has displayed in the providing or in directing the providing of funeral services or funeral supplies or in performing or supervising the performing of an embalming, a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates the funeral director is unfit to continue as a funeral director;
- (b) the funeral director is suffering from a physical or mental condition or disorder of a nature and extent that makes it desirable in the interest of the public that the funeral director no longer be permitted to continue as a funeral director.

Examinations (4) If the Discipline Committee is required to hear and determine allegations of incompetence under clause (3) (b), the Discipline Committee may require the funeral director who is the subject of the hearing to submit to a physical or mental examination, or both, by such persons as the Board designates.

Suspension of licence (5) If a funeral director fails to submit to an examination required under this section, the Discipline Committee may order that the licence of the funeral director be suspended until the funeral director submits to the examination.

Evidence (6) A legally qualified medical practitioner who conducts a physical or mental examination required under this section is not compellable to produce at the hearing his or her case histories, notes or any other records that may constitute medical evidence.

Report (7) A person who conducts an examination under this section shall upon completing the examination forthwith prepare and deliver to the Registrar a report that contains facts, findings and conclusions and suggested treatment, if any.

Idem (8) A report that is prepared as a result of an examination that is conducted under this section shall be delivered by the Registrar to the funeral director,

- (a) if the examination is required prior to the hearing, at least five days prior to the commencement of the hearing; or



- (b) if the examination is required during the course of the hearing, at least five days prior to its introduction as evidence.

(9) A report that is prepared as a result of an examination that is conducted under this section is receivable as evidence without proof of its making or the signature of the person making the report. Idem

(10) A party to the hearing who is not tendering a report as evidence has the right to summon and cross examine the person who made the report on the contents of the report. Right to cross examine

(11) If the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, it may by order do any of the following things or any combination of the following things: Powers of Discipline Committee

1. Revoke the licence of the funeral director.
2. Suspend the licence of the funeral director for a stated period.
3. Impose restrictions on the licence of the funeral director for a period and subject to the conditions specified by the Discipline Committee.
4. Reprimand the funeral director.
5. Impose such fine as the Discipline Committee considers appropriate to a maximum of \$10,000 to be paid by the funeral director to the Treasurer of Ontario for payment into the Consolidated Revenue Fund.
6. Direct that the imposition of a penalty be suspended or postponed for the period and upon the terms specified by the Discipline Committee.

(12) If the Discipline Committee imposes a fine or reprimands a funeral director, the Discipline Committee may direct that the fine or the reprimand not be entered in the applicable register. Entry on register

(13) If the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Board reimburse the funeral director for the funeral director's costs or such portion thereof as the Discipline Committee fixes. Costs

Stay on  
appeal for  
incompetence

(14) If the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately despite the fact that an appeal is taken from the decision, unless the Tribunal otherwise orders and, where the Tribunal is satisfied that it is appropriate in the circumstances, the Tribunal may so order.

Stay on  
appeal for  
professional  
misconduct

(15) If the Discipline Committee revokes, suspends or restricts a licence on grounds other than for incompetence, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Discipline Committee otherwise orders, and, where the Committee considers that it is appropriate for the protection of the public, the Committee may so order.

Service of  
decision of  
Discipline  
Committee

(16) If the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the funeral director.

Continuation  
on expiry of  
Committee  
membership

(17) If a proceeding is commenced before the Discipline Committee and the term of office on the Board or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated.

Parties to  
discipline  
proceedings

**17.—(1)** In proceedings before the Discipline Committee, the Board and the funeral director whose conduct is being investigated in the proceedings are parties to the proceedings.

Examination  
of  
documentary  
evidence

(2) A funeral director whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members  
holding  
hearing not  
to have  
taken part in  
investigation,  
etc.

(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Board considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee.

(4) Members of the Discipline Committee shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or representative of a party except upon notice to and opportunity for all parties to participate. No communication

(5) The Discipline Committee may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law. Advice

(6) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at the cost to the parties. Recording of evidence

(7) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the person who produced them, be released to the person by the Committee within a reasonable time after the matter in issue has been finally determined. Release of documentary evidence

**18.**—(1) A party to proceedings before the Discipline Committee may appeal from its decision or order to the Tribunal. Appeal to Tribunal

(2) Subsections 14 (6) to (11) apply with necessary modifications to an appeal to the Tribunal from a decision or order of the Discipline Committee. Application

**19.**—(1) No person shall act or imply that the person is available to act as a funeral director unless the person is licensed to do so. Licence required

(2) No person shall operate or imply that the person is available to operate a funeral establishment unless the person is licensed to do so. Idem

(3) No person shall operate or imply that the person is available to operate a transfer service unless, Idem

(a) the person is licensed to do so; or

(b) the person is licensed to operate a funeral establishment and the transfer service is operated as part of the normal operation of the funeral establishment.

(4) No person other than a funeral director who is licensed to do so shall perform or imply that the person is available to perform embalming. Idem



Place of  
business

(5) No person shall operate a funeral establishment or transfer service except at a place that is named in the licence of the person.

Funeral  
services

(6) No funeral director shall offer funeral services except through a licensed funeral establishment.

Idem

(7) No funeral director shall offer funeral services to the public except through an operator of a funeral establishment who is licensed to do so.

Funeral  
establishment

(8) No operator of a funeral establishment shall employ a person as a funeral director unless the person is licensed as a funeral director.

Direction and  
management

(9) Every operator of a funeral establishment shall ensure that the funeral establishment is managed and directly supervised by a funeral director who is responsible for the conduct or misconduct of any person to whom the funeral director delegates responsibilities.

Idem

(10) No funeral director shall manage and directly supervise the operation of more than one funeral establishment except as prescribed.

Corporation

(11) Each corporation that is licensed to operate a funeral establishment shall ensure that at least one of the directors of the corporation is a funeral director.

Exceptions

(12) Subsections (1) and (4) do not apply,

- (a) to a student in a training program who is working under the supervision and in the presence of a funeral director; or
- (b) to a student who is enrolled in a recognized course of funeral services education and who is working under the supervision and in the presence of the instructor of the course.

Idem

(13) Subsection (4) does not apply to a person employed in a recognized school of medicine or anatomy while so employed.

Application

**20.**—(1) A person may apply to the Registrar for a licence to operate a funeral establishment or to operate a transfer service.

(2) A person who has successfully completed the educational requirements that are prescribed may apply to the Registrar for a licence as a funeral director. Idem

(3) An applicant is entitled to a licence or a renewal of a licence as a funeral director or to operate a funeral establishment or to operate a transfer service except if, Requirement

- (a) the applicant cannot reasonably be expected to be competent or financially responsible in the conduct of the applicant's business;
- (b) the past or present conduct of the persons referred to in subsection (4) affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty;
- (c) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence;
- (d) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;
- (e) the applicant will, if licensed, be carrying on activities under this Act and the regulations that are in contravention of another Act or a municipal by-law; or
- (f) in the case of a corporation that operates a funeral establishment, no director of the corporation is a funeral director.

(4) Clause (3) (b) applies to the following persons: Idem

1. The applicant.
2. An officer or director of the applicant.
3. A person holding more than 10 per cent of the equity shares of the applicant or an officer or director of such person.
4. Any person having a beneficial interest in the operation of the business of the applicant or licensee.

(5) The Registrar shall issue a licence as a funeral director, to operate a funeral establishment or to operate a transfer service, as the case requires, to every applicant therefor who Issue

pays the fee that is prescribed, complies with this Act and the regulations and is not disentitled under subsection (3).

Conditions

(6) A licence is subject to such conditions as may be consented to by the applicant, imposed by the Tribunal or prescribed.

Refusal to issue

**21.—**(1) Subject to section 22, the Registrar may refuse to issue a licence to an applicant if the applicant is not entitled to a licence under subsection 20 (3).

Refusal to renew

(2) Subject to section 22, the Registrar may refuse to renew or may suspend or revoke a licence,

- (a) for any reason that would disentitle the licensee to a licence under subsection 20 (3) if the licensee were an applicant;
- (b) if the licensee is in breach of a condition of the licence; or
- (c) if the licensee is a corporation and the shareholders of the corporation have changed in the manner and to the extent prescribed.

Fees

(3) Subject to section 22, the Registrar shall refuse to issue or renew a licence if the applicant has not paid the fee that is prescribed.

Proposal

**22.—**(1) If the Registrar proposes to refuse to issue or renew a licence, proposes to issue a licence subject to conditions or proposes to suspend or revoke a licence, the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant or the licensee.

Notice

(2) A notice under subsection (1) shall inform the applicant or licensee that the applicant or licensee is entitled to a hearing by the Tribunal if the applicant or licensee mails or delivers to the Registrar and to the Tribunal, within fifteen days after the notice is served on the applicant or licensee, notice in writing requiring a hearing and the applicant or licensee may so require such a hearing.

No hearing

(3) If an applicant or licensee does not require a hearing by the Tribunal, the Registrar may carry out the proposal stated in the notice to the applicant or licensee.

Hearing

(4) If an applicant or licensee requires a hearing, the Tribunal shall appoint a time for and hold a hearing.



(5) After holding a hearing, the Tribunal may by order direct the Registrar to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

Order

(6) The Tribunal may attach such conditions to its order or to the licence as it considers proper to give effect to the purposes of this Act.

Conditions

(7) The Registrar, the applicant or licensee who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

Parties

(8) The Registrar may cancel a licence upon the request in writing of the licensee and the surrender of the licence by the licensee.

Cancellation

(9) The Registrar may refer any matter that deals with licensing to the Licensing Committee for their recommendations.

Referral

**23.**—(1) A person who is refused a licence or who is refused a renewal of a licence may apply in writing to the Registrar for the issuance of a licence only if at least one year has passed since the refusal.

Application

(2) A person whose licence is revoked under this Act or whose registration was cancelled under a predecessor of this Act may apply in writing to the Registrar for the issuance of a licence only if at least one year has passed since the revocation or cancellation.

Idem

(3) A person whose licence is suspended under this Act or whose registration was suspended under a predecessor of this Act, for more than one year, may apply in writing to the Registrar for the removal of the suspension only if at least one year has passed since the suspension.

Idem

**24.**—(1) If the Registrar proposes to suspend or revoke a licence, the Registrar may, if the Registrar considers it to be necessary in the public interest, by order, temporarily suspend the licence and the order shall take effect immediately.

Temporary order

(2) If a hearing is required with respect to a proposal to suspend or revoke a licence, the order expires fifteen days after the date of the notice requiring the hearing unless the hearing is commenced, in which case the Tribunal holding the

Hearing

hearing may extend the time of expiration until the hearing is concluded.

No licence

(3) If the Registrar by order temporarily suspends a licence under this section or section 22, the licensee shall during the term of the suspension be considered not to be licensed under this Act.

Stay

R.S.O. 1980,  
c. 274

**25.** Despite the fact that a licensee appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Continuation

**26.** If in the time prescribed therefor or, if no time is prescribed before the expiry of the licensee's licence, a licensee applies in the manner prescribed for renewal of the licence and pays the fee prescribed, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) if the licensee is served with a notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, if a hearing is required, until the Tribunal has made its order.

Advertising

**27.—(1)** If the Director or the Registrar believes, on reasonable and probable grounds, that a person licensed under this Act has made a false or misleading public representation or that a representation is in contravention of this Act or the regulations, the Director or the Registrar shall order the person to stop making the representation and in the order shall set out the reasons for the order.

Compliance  
with order

(2) A person who receives an order under subsection (1) shall immediately comply with the order and shall refrain from making the representation, in any form, in the future.

Appeal

(3) Any person who receives an order under subsection (1) may appeal the order to the Tribunal.

Stay of order

(4) The Tribunal may issue a stay of any order made by the Director or Registrar under subsection (1).

Repayment

**28.** If a person is entitled to the repayment of money paid for or on account of funeral services, the operator of the funeral establishment, the funeral director who managed or manages the operation of the funeral establishment and any

funeral director in the employ of the operator of the funeral establishment who received the money or any part thereof are liable jointly and severally with any other person who is liable for the repayment of the money.

**29.** A licence is not required with respect to rites and ceremonies traditionally provided at a place of worship. Place of worship

**30.—**(1) No person other than a person who is licensed to operate a funeral establishment or a transfer service and who is a participant in good standing in the Compensation Fund shall enter into or offer to enter into a prepaid contract with a purchaser. Prepaid contracts

(2) Subsection (1) does not apply to a person selling funeral supplies under the authority of the *Cemeteries Act, 1989*. Idem  
1989, c. 50

**31.—**(1) No licensee shall enter into a prepaid contract that contains a provision for the payment of interment rights in a cemetery lot. Contracts

(2) All goods or services for which a licensee accepts payment in respect of one beneficiary shall be included in one prepaid contract. One contract

(3) No licensee shall enter into a prepaid contract that guarantees the price of any goods or services in the contract unless the price of all goods and services included in the contract are guaranteed. Guarantee

**32.—**(1) Prior to the death of the beneficiary, the purchaser or a person designated in the contract by the purchaser may cancel the contract at any time. Cancellation

(2) Prior to the death of the beneficiary but after the death of the purchaser, the beneficiary or the beneficiary's personal representative may cancel the contract at any time. Idem

(3) After the death of the beneficiary, only the beneficiary's personal representative may at any time cancel the contract prior to the delivery of all the services contracted for. Idem

(4) Subsections (1), (2) and (3) apply to contracts entered into before this Act comes into force. Idem

**33.** No person shall charge or accept any payment with respect to a prearrangement. Prearrangement fees

**34.—**(1) Every person who receives a payment under a prepaid contract shall hold the amount of the payment Trust



together with all income accrued thereon in trust until it is disbursed in accordance with this Act and the regulations.

Cancellation

(2) If a prepaid contract is cancelled, the person holding the funds in trust under the contract shall forthwith pay the funds and all income accrued thereon to,

- (a) if the prepaid contract is cancelled prior to the death of the beneficiary, the purchaser or the person set out in the contract;
- (b) if the prepaid contract is cancelled prior to the death of the beneficiary but after the death of the purchaser, the beneficiary; or
- (c) if the prepaid contract is cancelled after the death of the beneficiary, the estate of the beneficiary.

Deductions

(3) If a prepaid contract is cancelled after thirty days of the entering into of the contract, the person paying under subsection (2) may deduct from the amount paid such fees as are prescribed.

Application

(4) Subsection (1) does not apply to a payment made to an insurer under an insurance contract or plan.

Repayment

**35.**—(1) If a prepaid contract is fulfilled, the balance, if any, of the prepayment funds that are in excess of the cost of delivering the services and supplies contracted for shall be paid to the beneficiary's estate forthwith despite any contrary provision in the contract.

Costs

(2) The cost of delivering the services and supplies required under a prepaid contract shall not exceed the amount that would otherwise be charged for the same services and supplies if there had not been prepayment.

Contract requirements

**36.**—(1) A prepaid contract is not enforceable by an operator of a funeral establishment or transfer service unless,

- (a) it is written, signed by both parties and complies with the regulations;
- (b) it sets out the purchaser's cancellation rights under this Act; and
- (c) the operator delivers a signed copy of the contract to the purchaser at the time the contract is made.

(2) An operator of a funeral establishment or transfer service who receives money under a contract that is not enforceable because of the application of this section shall refund to the purchaser, immediately upon written demand, with interest at the prescribed rate, all money received. Refund with interest

(3) Subsection (2) does not apply after the supplies and services have been provided under the contract. Exception

**37.** Every licensee shall make such information as is prescribed available to the public in the manner and form prescribed. Public information

**38.—**(1) No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract be made. Soliciting prohibited

(2) No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract be made. Idem

(3) This section does not prohibit, Exception

(a) a contact made at the request of the person being contacted; or

(b) a contact with a licensee.

**39.—**(1) No person shall operate a funeral establishment or transfer service in conjunction with the owner of a cemetery or crematorium in a manner that is prescribed. Prohibition

(2) No person shall operate a funeral establishment or transfer service from locations that are prescribed. Idem

**40.—**(1) If the Director or the Board is of the opinion that a person is not complying with this Act or the regulations, despite the imposition of a penalty in respect of the non-compliance and despite the fact that another remedy may be available, the Director or the Board may apply to a judge of the High Court for an order directing the person to comply. Restraining order

(2) Upon an application under subsection (1), the judge may make the order applied for or such other order as the judge thinks appropriate. Idem

(3) An appeal lies to the Divisional Court from an order made under subsection (2). Idem

**41.—**(1) If the Director has reasonable and probable grounds to believe that a licensee is doing or is about to do Freezing assets

something that will jeopardize the public interest, the Director may direct any person holding, having on deposit or controlling assets of the licensee or trust funds under the control of the licensee to hold the assets or trust funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Scope of  
direction

(2) In the case of a bank or a corporation, a direction under subsection (1) applies only to the offices, branches or agencies thereof named in the direction.

Application  
for directions

(3) Any person named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular assets or trust funds, may apply to the Director for an order of clarification.

Revocation  
or  
amendment  
of direction

(4) On an application of a licensee or any other person having an interest therein, the Director may make an order on such conditions as are set out in the order revoking the direction or consenting to the release of a particular asset or trust fund from the direction.

Appeal

(5) A person affected by a direction or order of the Director made under this section or a refusal to make an order may appeal to the Tribunal.

Application

(6) Subsections 14 (6) to (11) apply with necessary modifications to an appeal to the Tribunal from a direction or order of the Director.

Inspectors

**42.—**(1) The Registrar or a Director may appoint inspectors for the purpose of determining whether there is compliance with this Act and the regulations.

Certificate of  
appointment

(2) An inspector exercising a power under this Act shall, on request, produce his or her certificate of appointment.

Inspections

**43.—**(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may,

- (a) enter any place at any reasonable time;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) inspect and, upon giving a receipt therefor, remove, for the purpose of making copies or extracts, documents or things relevant to the inspection;



- (d) inquire into negotiations, transactions, loans or borrowings of a licensee and into assets owned, held in trust, acquired or disposed of by a licensee that are relevant to an inspection;
- (e) conduct such tests as are reasonably necessary; and
- (f) remove materials or substances for examination or test purposes subject to the licensee or other occupant of the premises being notified thereof.

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier. Entry to dwellings

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant, Warrant

- (a) to do anything set out in clause (1) (a), (c), (e) or (f);
- (b) to search for and seize any document or thing relevant to the inspection; or
- (c) to enter and search a room actually used as a dwelling.

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that, in the case of a warrant to be issued under, Requirements for warrant to issue

- (a) clause (3) (a), an inspector has been prevented from doing anything permitted under clause (1) (a), (c), (e) or (f) or there is reasonable ground to believe that an inspector may be prevented from doing any of those things;
- (b) clause (3) (b), to search for and seize a document or thing that there is reasonable ground to believe will afford evidence relevant to a contravention of this Act or the regulations; or
- (c) clause (3) (c), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe is relevant to an inspection under this Act.

- Execution of warrant (5) A warrant issued under this section shall specify the hours and days during which it may be executed.
- Expiry (6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made.
- Notice not required (7) A warrant under this section may be issued or renewed before or after expiry upon application without notice.
- Experts (8) An inspector is entitled to call upon such experts as are necessary to assist the inspector in carrying out an inspection under this Act.
- Assistance (9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant.
- Copies (10) An inspector taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken.
- Admissibility of copies (11) Copies of, or extracts from, documents and things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.
- Obstruction of inspector **44.**—(1) No person shall obstruct an inspector in carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.
- Facilitating inspection (2) It is a condition of each licence issued under this Act that the licensee facilitate an inspection relevant to the licence.
- Appointment of receiver and manager **45.**—(1) The Director or Registrar may apply to a judge or a local judge of the Supreme Court for the appointment of a receiver and manager of an involved funeral establishment or transfer service if,
- (a) the Director or Registrar has reasonable and probable grounds to believe that a person licensed under this Act has failed or is about to fail to provide contracted and paid for funeral services to a client;
  - (b) the Director or Registrar is advised that a proposal to suspend or revoke a licence under section 21 or

to temporarily suspend a licence under section 24 has been made; or

- (c) the Director has directed or is about to make a direction under section 41.

(2) A judge, upon an application being made under subsection (1), without notice or, if the judge considers that notice should be given, upon such notice as the judge stipulates, may, if it is considered in the public interest and subject to the *Bankruptcy Act* (Canada), appoint a receiver and manager to take possession and control of the business of the person in respect of whom an action referred to in subsection (1) applies for a period not exceeding sixty days.

Idem

R.S.C. 1985,  
c. B-3

(3) An appointment made under subsection (2) may be extended, upon an application without notice, for an additional period not exceeding sixty days.

Extension

(4) A receiver and manager appointed under subsection (2) shall take possession and control of the assets of the business and shall thereafter conduct the business and take such steps as in the opinion of the receiver and manager should be taken toward its rehabilitation.

Receiver and  
manager  
taking  
control

(5) For the purposes of subsection (4), the receiver and manager have all the powers of the board of directors of the corporation, if the business is a corporation, or of a sole proprietor or all partners if the business is not a corporation and, without limiting the generality of the foregoing, the receiver and manager may,

Idem

- (a) exclude the directors, officers, servants and agents of the business from the premises and property of the business; and
- (b) carry on, manage and conduct the operations of the business and in the name of the business preserve, maintain, realize, dispose of and add to the property of the business and receive the incomes and revenues of the business.

(6) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Enforcement  
of order

(7) Upon an application being made under this section, the rules of practice of the Supreme Court apply.

Rules of  
practice



## Regulations

**46.**—(1) The Lieutenant Governor in Council may make regulations,

1. prescribing the manner in which trust accounts shall be kept and accounted for;
2. providing for the inspection of trust accounts;
3. prescribing the duties of depositories with respect to trust funds held under this Act;
4. requiring receipts to be given by licensees with respect to contracts;
5. providing for the establishment, maintenance and administration of the Compensation Fund;
6. prescribing provisions that relate to the investing and paying out of moneys from the Compensation Fund;
7. providing for the payment of levies into the Compensation Fund and prescribing the amounts of levies;
8. providing for appeals from a refusal to pay out of the Compensation Fund;
9. governing the powers and duties of the trustee administering the Compensation Fund;
10. requiring the purchase of bonds for the purpose of indemnifying the Compensation Fund;
11. prescribing the terms and amounts of bonds;
12. providing for payment out of the Compensation Fund of claims and procedures to be followed with respect thereto;
13. requiring participation in the Compensation Fund by licensees;
14. on any matter relating generally to the purchase, renewal or terms of a bond or the disposition of payments received thereunder;
15. governing the form and content of contracts and receipts, including the cancellation of contracts;

16. prescribing the terms that a contract shall be deemed to contain;
17. prescribing conditions under which contracts may be assigned and prohibiting assignments that are not in accordance with the prescribed conditions;
18. regulating, limiting or prohibiting the soliciting of contracts;
19. governing the term during which each class or type of licence is valid;
20. exempting any person or thing or class of person or thing from the application of any provision of this Act or the regulations and prescribing conditions for any exemption;
21. authorizing persons, other than funeral directors, to perform specified acts in the providing of funeral services under the supervision or direction of a funeral director;
22. governing the books, accounts, records and information that shall be kept by licensees and that shall be filed with the Registrar;
23. prescribing fees and requiring the payment of fees;
24. prescribing forms and providing for their use;
25. prescribing educational requirements and testing requirements on an initial and ongoing basis for licensees and employees of licensees;
26. governing applications for licences and renewals of licences;
27. prescribing classes of licences;
28. governing the requirements and qualifications for the issuing of licences and prescribing the conditions for obtaining and maintaining a licence;
29. governing standards of practice and operation for licensees;
30. respecting the methods and materials that may be used in providing funeral services;

31. prohibiting or governing the advertising of funeral services or funeral supplies and prohibiting or governing the display of funeral supplies to the public;
32. governing the construction, location, equipment, maintenance, repairs, additions and alterations to funeral establishments and governing the information, plans and materials to be furnished to the Registrar with respect thereto;
33. governing the equipment and practices, including hygienic practices, with respect to the embalming, transportation, preparation and disposal of dead human bodies;
34. regulating, controlling and prohibiting the use of terms, titles or designations by licensees;
35. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity;
36. governing the availability and display of funeral services and funeral supplies;
37. prescribing specifications and minimum requirements for funeral services and funeral supplies;
38. prescribing, for any notice required to be given under this Act, the type of notice and the manner in which it is to be given;
39. governing the payment of money into and out of trust funds, including the time within which and the circumstances under which payments are to be made;
40. providing for the maintenance and inspection of registers of persons who are licensed;
41. prescribing anything that is referred to in this Act as being prescribed.

Limited  
application

(2) A regulation made under this Act may be of limited application.

Retroactive

(3) A regulation made under this section may be retroactive in effect and may apply to contracts entered into before this Act comes into force.

Offence

**47.—(1)** Every person who,



- (a) furnishes false, misleading or incomplete information in an application under this Act or in a statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with a direction or order made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence.

(2) Every director or officer of a corporation who concurs in an offence under this Act is guilty of an offence. Idem

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$20,000 and on a subsequent conviction to a fine of not more than \$20,000 and to imprisonment for a term of not more than one year. Idem

(4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$40,000. Idem

(5) No proceeding under this section shall be commenced more than two years after the facts upon which the proceedings are based first came to the knowledge of the Director. Limitation

(6) A statement as to the time when the facts upon which proceedings are based first came to the knowledge of the Director purporting to be certified by the Director is, without proof of the office or signature of the Director, admissible in evidence in any proceeding, in the absence of evidence to the contrary, as evidence of the facts stated therein. Certificate as evidence

(7) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto. Restitution

**48.—**(1) Every person employed in the administration of this Act, including any person making an inspection under this Act and any member of the Board or a committee of the Board, shall preserve secrecy with respect to all matters that come to the person's knowledge in the course of the person's duties, employment, inquiry or inspection and shall not communicate any such information to any other person except, Matters confidential

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to the person's counsel;
- (c) with the consent of the person to whom the information relates; or
- (d) to an employee of the Ministry of Consumer and Commercial Relations or to an employee of another ministry who requires the information in the performance of his or her duties and if disclosure is necessary for the administration of this Act or any other Act and the regulations thereunder administered by the Minister.

Idem

(2) The Ministry of Consumer and Commercial Relations or another ministry may disclose information in its custody or control to an employee of the Board if,

- (a) the personal information is reasonably required to verify the truth of the contents of an application for, or an application for renewal of, a licence or to verify the truth of any other information supplied in support of any such application; or
- (b) the Ministry or agency of the Ministry has reasonable grounds to believe that the personal information is relevant to a person's qualification to hold a licence.

Testimony in  
civil suit

(3) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by the person in the course of the person's duties, employment, inquiry, investigation or inspection except in a proceeding under this Act or the regulations.

Certificate as  
evidence

**49.** A statement as to,

- (a) the licensing or non-licensing of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar; or
- (c) any other matter pertaining to licensing, non-licensing, filing or non-filing,

containing information from the records kept by the Registrar under this Act purporting to be certified by the Registrar under the seal of the Board is, without proof of the office or signature of the Registrar, admissible in evidence in any proceeding, in the absence of evidence to the contrary, as evidence of the facts stated therein.

**50.**—(1) A notice, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at that person's last known address. Service

(2) A notice, order or other document sent by first class mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that the notice, order or other document was not received until a later date because of absence, accident, illness or other cause beyond that person's control. Idem

**51.**—(1) A funeral director who is registered with the Board of Funeral Services under the *Funeral Services Act* on the date this Act comes into force is deemed to be licensed as a funeral director until the expiration of the licence, unless the licence is sooner surrendered, suspended or revoked. Transition  
R.S.O. 1980,  
c. 180

(2) A person who is licensed with the Board of Funeral Services under the *Funeral Services Act* to establish and maintain a funeral services establishment on the date this Act comes into force is deemed to be licensed to operate a funeral establishment until the expiration of the licence, unless the licence is sooner surrendered, suspended or revoked. Idem

**52.** The board known as the Funeral Services Review Board is dissolved and any matter before the Board on the date this Act comes into force shall be dealt with by the Tribunal. Funeral  
Services  
Review  
Board not  
continued

**53.** The following are repealed: Repeals

1. The *Funeral Services Act*, being chapter 180 of the Revised Statutes of Ontario, 1980.
2. Section 3 of the *Mobility Rights Statute Law Amendment Act, 1985*, being chapter 5.
3. The *Prearranged Funeral Services Act*, being chapter 387 of the Revised Statutes of Ontario, 1980.



Commence-  
ment

**54.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**55.** The short title of this Act is the *Funeral Directors and Establishments Act, 1989*.

## CHAPTER 50

### **An Act to revise the Cemeteries Act**

*Assented to October 16th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

#### **1. In this Act,**

#### **Definitions**

“burial site” means land containing human remains that has not been approved or consented to as a cemetery in accordance with this Act or a predecessor of this Act;

“by-laws”, when used in relation to a cemetery, means the rules under which a cemetery or crematorium is operated;

“cemetery” means land set aside to be used for the interment of human remains and includes a mausoleum, columbarium or other structure intended for the interment of human remains;

“cemetery services” means,

(a) in respect of a lot,

(i) opening and closing of a grave,

(ii) interring or disinterring human remains,

(iii) providing temporary storage in a receiving vault,

(iv) construction of a foundation for a marker,

(v) setting of corner posts,

(vi) providing,

(A) a tent or canopy,

(B) carrying and lowering devices, and

- (C) ground cover,
  - for an interment service, and
  - (vii) preparing flower beds and planting flowers and shrubs,
- (b) in respect of a crypt or compartment in a mausoleum,
  - (i) opening, closing and sealing of the crypt or compartment,
  - (ii) providing temporary storage in a vault or crypt,
  - (iii) providing a tent or canopy for an interment service, and
  - (iv) providing elevating devices,
- (c) in respect of a niche or compartment in a columbarium,
  - (i) opening, closing and sealing of the niche or compartment, and
  - (ii) providing a tent or canopy for an interment service,
- (d) in respect of a crematorium, all services provided by the owner of the crematorium at the crematorium, and
- (e) in respect of a cemetery, such other services as are provided by the owner of the cemetery at the cemetery;

“cemetery supplies” includes interment vaults, markers, flowers, liners, urns, shrubs and artificial wreaths and other articles intended to be placed in a cemetery;

“columbarium” means a structure designed for the purpose of interring cremated human remains in sealed compartments;

“commercial cemetery” means a cemetery operated for the purpose of making a profit for the owner;



“crematorium” means a building fitted with appliances for the purpose of cremating human remains and includes everything incidental and ancillary thereto;

“Director” means a Director appointed under the *Ministry of Consumer and Commercial Relations Act*; R.S.O. 1980,  
c. 274

“equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“human remains” means a dead human body and includes a cremated human body;

“income” means the interest or money earned, including the compounding thereof, by the investment of funds;

“inter” means the burial of human remains and includes the placing of human remains in a lot;

“interment rights” includes the right to require or direct the interment of human remains in a lot;

“interment rights holder” means a person with interment rights with respect to a lot and includes a purchaser of interment rights under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that Act;

“land registry office” means the land registry office or the land titles office in the area in which a cemetery is located;

“lot” means an area of land in a cemetery containing, or set aside to contain, human remains and includes a tomb, crypt or compartment in a mausoleum and a niche or compartment in a columbarium;

“marker” means any monument, tombstone, plaque, headstone, cornerstone, or other structure or ornament affixed to or intended to be affixed to a burial lot, mausoleum crypt, columbarium niche or other structure or place intended for the deposit of human remains;

“mausoleum” means a building or structure, other than a columbarium, used as a place for the interment of the human remains in sealed crypts or compartments;

“Minister” means the Minister of Consumer and Commercial Relations;

“municipality” means the corporation or other entity having municipal jurisdiction in the area in which a cemetery is located and includes a police village, city, town, village, township or improvement district or the council thereof;

“owner” means an owner of a cemetery or a crematorium;

“person” includes a board of trustees, local council of a municipality or other organization or group of persons organized for the purpose of operating or managing a cemetery;

“plot” means two or more lots in which the rights to inter have been sold as a unit;

“pre-need supplies or services” means cemetery supplies or services that are not required to be provided until the death of a person alive at the time the arrangements are made;

“prescribed” means prescribed by the regulations made under this Act;

“Registrar” means the Registrar appointed under this Act;

“sales representative” means,

- (a) a person who sells or offers for sale interment rights or cemetery supplies or services on behalf of a commercial cemetery, or
- (b) a person whose primary employment is selling interment rights or cemetery supplies or services;

“Tribunal” means The Commercial Registration Appeal Tribunal;

“trust fund” means a trust fund established for the purpose of this Act.

#### CONSENT TO ESTABLISH CEMETERY OR CREMATORIUM

Consent for  
cemetery,  
etc.

**2.** No person shall establish, alter or increase the capacity of a cemetery or crematorium without the consent of the Registrar.

Application  
for consent

**3.—(1)** An applicant for consent shall apply to the Registrar and,

- (a) pay the prescribed fee;

- (b) submit the prescribed documents showing the layout of the cemetery and the location of existing or proposed plots, lots, structures and fixtures; and
- (c) if the applicant is the owner of a commercial cemetery or a cemetery of a class prescribed for the purpose of this clause, pay a deposit in a prescribed amount into a Care and Maintenance Fund.

(2) If the cemetery or crematorium is proposed to be established or already exists in an area with municipal organization, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the appropriate municipality. Approval required

(3) If the cemetery or crematorium is to be established or enlarged to encroach on land, in an area without municipal organization, that is Crown land at the time of the application for consent, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the Minister of Natural Resources. Idem

4. A municipality that receives a request for an approval required by subsection 3 (2) may hold public hearings to determine if the approval is in the public interest. Public hearings

5.—(1) A municipality, upon receiving a request for approval, shall give or refuse to give the approval within a reasonable time after receiving the request. Decision

(2) In considering a request for an approval, the principal factor shall be the public interest. Public interest

(3) A municipality shall, upon arriving at a decision on an application, Notice of decision

- (a) send a copy of the decision together with the reasons for it to the Registrar and to the applicant; and
- (b) publish notice of the decision in a local newspaper.

(4) The applicant, Registrar or any person with an interest therein may, within fifteen days after publication of the notice of the decision, refer the decision of a municipality to the Ontario Municipal Board for a hearing. Appeal

(5) Despite subsection (4), if an applicant or the Registrar does not receive a copy of a decision until after the decision is published, the fifteen days referred to in subsection (4) apply Idem



after the applicant or Registrar, as the case may be, receives the copy.

Representation

(6) The Registrar is entitled to make representations to the Ontario Municipal Board in any appeal under subsection (4).

Board decision

**6.**—(1) The Ontario Municipal Board may reverse the decision appealed from and substitute its own decision.

Idem

(2) A decision of the Board that is substituted under subsection (1) shall be deemed to be the decision of the municipality.

Certificate of consent

**7.**—(1) The Registrar shall give a certificate of consent to the establishment, alteration or increase in the capacity of a cemetery or crematorium, as the case may be, if,

- (a) the applicant has the approval of the municipality or the Minister of Natural Resources;
- (b) the applicant is licensed to own that cemetery and is and will be on the granting of the licence in compliance with the requirements of this Act and the regulations and the laws intended for the protection of the environment and of health; and
- (c) where neither approval referred to in clause (a) is required, the Registrar is satisfied that the consent is in the public interest.

Notice of refusal to issue

(2) The Registrar, on refusing to give a certificate of consent, shall advise the applicant, in writing, of,

- (a) the reason for the refusal; and
- (b) the applicant's right to appeal.

Appeal

(3) An applicant who receives a notice under subsection (2) may appeal to the Tribunal within fifteen days after receiving the notice.

Order by Tribunal

(4) If the Tribunal finds that the applicant is in compliance with clauses (1) (a) and (b) or that giving the consent is in the public interest, as the case may be, the Tribunal shall order the Registrar to issue the certificate of consent applied for or a consent in a modified version.

Idem

(5) Upon receiving an order under subsection (4), the Registrar shall issue the certificate as ordered.

(6) A certificate of consent shall contain a sufficient Registration description of the cemetery or crematorium so that the certificate may be registered in the appropriate land registry office.

(7) Upon registration of a certificate of consent, the land Effect of registration described therein becomes a cemetery.

#### CLOSING CEMETERY

**8.**—(1) In this section and in sections 9, 10, 11, 12 and 13, Closing cemetery a reference to a cemetery includes any part of a cemetery.

(2) The Registrar may order a cemetery closed if the closing is in the public interest. Idem

(3) An order shall not be made under subsection (2) until, Notice

(a) notice of the intention to make the order is given in the manner and to the persons prescribed; and

(b) interested persons are given the opportunity to make submissions to the Registrar within such time as is prescribed.

(4) Notice is not required if, Idem

(a) the request is from the owner;

(b) no interments have been made in the cemetery to be closed; and

(c) the consent of all affected interment rights holders has been obtained.

**9.**—(1) In an order to close a cemetery, the Registrar Order may,

(a) declare a cemetery or a portion thereof closed;

(b) require the owner to disinter all human remains therein and specify the manner of disinterment and the manner and place of reintering or dealing with the remains;

(c) require the owner to remove any markers and relocate them to a specified place; and

(d) require the owner to provide or acquire equivalent interment rights for all holders of interment rights with respect to unused lots in the cemetery.

- Substitution (2) In an order to close a cemetery, the Registrar may designate another person to do anything that the owner may be required to do.
- Notice (3) The Registrar shall give every person who made a submission notice of the order and at the same time advise the person of the right of appeal.
- Coming into force (4) Subject to subsection (5), an order to close a cemetery comes into force thirty days after it is made unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (5) If submissions were made in respect of the order, the order comes into force thirty days after notice has been given to each person who made a submission unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (6) An order that is appealed comes into force upon being upheld by the Tribunal.
- Appeal **10.** A person with an interest therein may appeal, to the Tribunal,  
(a) an order to close a cemetery any time before the order comes into force; or  
(b) a refusal to order a cemetery closed.
- Certificate **11.**—(1) The Registrar, upon being satisfied that the requirements in an order to close a cemetery have been complied with, shall issue a certificate, with a legal description of the land involved, that the cemetery is closed.
- Idem (2) Despite subsection (1), an applicant therefor is entitled to a certificate that a cemetery is closed if the cemetery had been closed by the Lieutenant Governor in Council but a certificate issued under subsection 59 (7) of the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that subsection has not been registered.
- Registration (3) A certificate issued under this section may be registered in the appropriate land registry office.
- Effect of registration (4) Upon registration of a certificate of closing, the land described therein ceases to be a cemetery.
- Maintenance fund **12.**—(1) Where any money has been paid into a care and maintenance fund with respect to a cemetery that is to be



closed, the Registrar shall direct that money to be transferred to the trustee of the fund maintained by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised.

(2) The amount transferred under subsection (1) is a credit against the amount required to be paid into the fund by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised. Idem

**13.** Where any money has been paid into a pre-need assurance fund with respect to interment rights in a cemetery that is to be closed, the Registrar shall direct that money to be paid to the trustee of the fund maintained by the owner of the cemetery where alternative interment rights have been made available for the holders of interment rights in the cemetery to be closed. Pre-need assurance fund

#### LICENCES

**14.** No person shall own a cemetery or crematorium unless licensed under this Act to own that cemetery or crematorium. Licence required

**15.—(1)** A person may apply to the Registrar for a licence to own a cemetery or crematorium. Licence to own

(2) An applicant is entitled to a licence except if, Requirements

- (a) the applicant cannot reasonably be expected to be financially responsible in the operation of a cemetery or crematorium;
- (b) the past or present conduct of the persons referred to in subsection (3) affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty;
- (c) the applicant or managing employees of the applicant do not have the experience and competence required to manage the cemetery or crematorium in accordance with the law;
- (d) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;
- (e) the applicant will, if licensed, be carrying on activities under this Act that are in contravention of another Act or a municipal by-law;

- (f) the applicant is unable to provide the resources and facilities required to manage a cemetery or crematorium; or
- (g) the applicant or an employee or agent of the applicant has made a false statement or provided false information in an application for a licence.

Idem

(3) Clause (2) (b) applies to the following persons:

1. The applicant.
2. An officer or director of the applicant.
3. A person holding more than 10 per cent of the equity shares of the applicant or an officer or director of such person.
4. Any person having a beneficial interest in the operation of the business of the applicant or licensee.

Issue of  
licence

(4) The Registrar shall issue a licence to own an identified cemetery or crematorium to an applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2).

Conditions  
attaching to  
licence

(5) A licence is subject to such conditions as may be consented to by the applicant, imposed by the Tribunal or prescribed.

Notice

(6) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal.

Appeal

(7) An applicant who receives a notice under subsection (6) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice.

Refusal to  
issue licence

(8) If no appeal is filed under subsection (7), the Registrar may refuse to issue the licence applied for.

Revocation  
of owner's  
licence

**16.—**(1) The Registrar may revoke or refuse to renew a licence to own a cemetery or a crematorium if,

- (a) the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence;

- (b) where the licensee is a corporation, the shareholders of the corporation have changed in the manner and to the extent prescribed; or
- (c) the Registrar has reasonable and probable grounds to believe that the continued operation of the cemetery or crematorium by the licensee,
  - (i) creates a risk to public health, safety or decency, or
  - (ii) will result in a financial loss by members of the public because provisions of this Act or the regulations are not being complied with.

(2) If the Registrar intends to revoke or to refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal. Notice

(3) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or refusal to the Tribunal within fifteen days after receiving the notice. Appeal

(4) If an appeal has been filed under subsection (3), the Registrar shall not revoke the licence unless the Tribunal determines that the licence should be revoked. Delay

(5) If no appeal is filed under subsection (3), the Registrar may revoke the licence after the time for appeal has expired. Where no appeal

(6) Section 14 does not apply to an owner whose licence is revoked so long as the Registrar is satisfied that the owner is making reasonable efforts to sell the cemetery or crematorium. Exception to licensing requirement

**17.—(1)** The Director may appoint a manager to operate a cemetery or crematorium in the place of the owner if, Appointment of manager

- (a) the Director has reasonable and probable grounds, based on a statement under oath, to believe that the owner is doing or is about to do something in the operation of the cemetery or crematorium that,
  - (i) creates or is likely to create a risk to public health, safety or decency, or
  - (ii) is causing or is likely to cause financial loss to members of the public; or



(b) the owner's licence is revoked.

Powers of  
manager

(2) A manager appointed under subsection (1) has all the powers of the owner with respect to the operation of the cemetery or crematorium including the power to exclude the owner and, if the owner is a corporation, the directors or officers of the corporation, from the premises of the business.

Effect of  
appointment

(3) From the appointment of a manager under subsection (1) until the appointment is cancelled, the owner being replaced does not have the authority to deal with any assets or trust funds relating to the cemetery or crematorium and shall not be involved in the operation of the cemetery or crematorium.

Appeal

(4) Any person affected by an appointment of a manager may apply to a judge of the Supreme Court for an order cancelling the appointment and the order may include such directions and conditions as seem appropriate.

Selling  
interment  
rights

**18.**—(1) No person shall sell interment rights unless that person does so as an agent acting on behalf of a licensed owner.

Selling  
supplies, etc.

(2) No person shall act as a sales representative on behalf of an owner unless that person is licensed as a sales representative and represents an owner specified in the sales representative's licence.

Exception for  
owners

(3) Subsections (1) and (2) do not apply to preclude a person licensed as an owner from selling rights, services or supplies to be used in or provided at a cemetery or crematorium owned by that person.

Licence to  
sell

**19.**—(1) An individual may apply to the Registrar for a licence to act as a sales representative on behalf of an owner.

Requirements  
for licence

(2) An applicant is entitled to a licence except if,

- (a) the past or present conduct of the applicant affords reasonable and probable grounds for believing that the applicant will not carry on business in accordance with the law and with integrity and honesty;
- (b) the applicant, in receiving the licence, would be in a position of apparent conflict of interest;
- (c) the applicant does not have a position with a licensed owner or a commitment to be hired by a licensed owner upon receiving a licence; or

- (d) the applicant has made a false statement or provided false information in an application for a licence.

(3) A conviction for an offence that involves misrepresentation or a lack of integrity or honesty is evidence, in the absence of evidence to the contrary, that the person convicted will not carry on business in accordance with the law and with integrity and honesty within the meaning of clause (2) (a). Past conduct

(4) An applicant's intention to work for more than one owner is evidence, in the absence of evidence to the contrary, of an apparent conflict of interest. Conflict of interest

(5) The Registrar shall issue a licence to act as a sales representative to every applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2). Issue of licence

(6) A licence is subject to such conditions as may be consented to by the licensee, imposed by the Tribunal or prescribed. Conditions attaching to licence

(7) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal. Notice

(8) An applicant who receives a notice under subsection (7) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice. Appeal

(9) If no appeal is filed under subsection (8), the Registrar may refuse to issue the licence. Refusal to issue licence

**20.—**(1) The Registrar may revoke, suspend or refuse to renew a sales representative's licence if the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence. Revoking, suspending or refusing to renew sales licence

(2) If the Registrar intends to revoke, suspend or refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal. Notice

(3) If there are grounds to suspend a licence and the Registrar considers it to be in the public interest that the licence be suspended immediately, the Registrar may, by order, suspend a sales representative's licence with the order taking effect when it is made. Immediate suspension

Idem (4) An immediate suspension expires fifteen days after it is appealed to the Tribunal unless, before the fifteen days expire, the Tribunal extends the suspension.

Appeal (5) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or suspension to the Tribunal within fifteen days after receiving the notice.

Idem (6) Any licensee whose licence is suspended under subsection (3) may appeal the suspension to the Tribunal.

Delay (7) If an appeal has been filed under subsection (5), the Registrar shall not revoke or suspend the licence unless the Tribunal determines that the licence should be revoked or suspended.

Where no appeal (8) If no appeal is filed under subsection (5), the Registrar may revoke or suspend the licence after the time for appeal has expired.

Application **21.**—(1) A person who is refused a licence or a renewal of a licence under this Act may apply for a licence only after one year has passed since the refusal.

Idem (2) A person whose licence is revoked under this Act may apply for a licence only after one year has passed since the revocation.

Continuation **22.** The licence of a licensee who has applied for a renewal of the licence continues until,

(a) the renewal is granted; or

(b) if the licensee is served with a notice that the Registrar intends to refuse to renew, the time for appeal has expired or, if an appeal is required, the matter has been finally determined.

#### CONSUMER PROTECTION

Interment rights **23.**—(1) An interment rights holder may require, by written demand, the owner to repurchase the rights at any time before they are used.

Idem (2) Every owner who receives a demand made under subsection (1) shall repurchase the interment rights within thirty days after receiving the demand.

Idem (3) The repurchase price of interment rights shall be determined in the prescribed manner.



(4) An interment rights holder or the personal representative of the holder has the right to inter any human remains in a lot or other facility approved under this Act in accordance with the by-laws governing the facility. Idem

(5) An interment rights holder or the personal representative of the holder may erect a commemorative marker on a lot or other receptacle for human remains if the erection of the marker is not in contravention of the by-laws governing the facility. Idem

(6) Every person has the right to reasonable access to a lot at any time except as prohibited by the by-laws governing the facility. Idem

(7) An interment rights holder and the relatives of any person whose remains are interred in a cemetery have the right to decorate the appropriate lot if the decoration is not in contravention of the by-laws governing the facility. Idem

(8) Subsection (1) does not apply to require repurchase of interment rights in a plot in which any interment rights have been exercised. Exception

**24.—(1)** A purchaser of pre-need supplies or services from an owner may cancel, by written notice to the owner, the contract to purchase at any time before the services or the supplies are provided or if the owner contravenes subsection (5). Pre-need services or supplies

(2) Subsection (1) or (5) does not apply if the supplies or services are provided within thirty days after the contract is made because of the death of the person for whom the supplies or services were contracted. Idem

(3) Subject to subsection (4), an owner who receives a notice that a contract is cancelled under this section shall refund to the purchaser all money, together with all income thereon, received under the contract within thirty days after receiving the notice. Idem

(4) An owner to whom this section applies may retain a service fee determined in the prescribed manner unless the contract is cancelled within thirty days after it is made. Idem

(5) No owner shall provide pre-need supplies or services under a contract within the thirty-day period immediately following the day the contract is made. Prohibition

Application (6) This section applies to contracts for pre-need supplies or services whether the contracts were made before or after this section comes into force.

Contract requirements **25.**—(1) A contract for the purchase of interment rights or cemetery supplies or services is not enforceable by an owner unless,

- (a) it is written, signed by both parties and complies with the regulations;
- (b) it sets out the purchaser's cancellation rights under this Act and whether or not cemetery supplies or services are to be provided before the death of the person for whom they are contracted;
- (c) the owner complies with subsections (2) and (3); and
- (d) the owner delivers a signed copy of the contract to the purchaser at the time the contract is made.

Idem (2) An owner who sells interment rights must deliver to the purchaser at the time the contract is made a copy of the by-laws of the cemetery and a certificate of interment rights.

Idem (3) An owner who sells pre-need supplies or services must set out in the contract exactly what the supplies or services are and the price charged for them.

Refund with interest (4) An owner who receives money under a contract that is not enforceable because of the application of this section shall refund to the purchaser, immediately upon written demand, with interest at the prescribed rate, all money received.

Idem (5) Subsection (4) applies even though the owner has paid the money into a trust fund that is not accessible to the owner.

Exception (6) Subsection (4) does not apply, in the case of interment rights, after the rights are used or, in the case of cemetery supplies or services, after the supplies or services are provided.

Public information **26.** Every owner shall make such information as is prescribed available to the public in the manner and form prescribed.

Price list **27.**—(1) Every owner shall file with the Registrar a price list of all interment rights and cemetery services and supplies

that may be sold and all charges that may be made by that owner.

(2) No owner shall charge or collect or receive money for interment rights or cemetery supplies or services that is more than the price for the rights, supplies or services filed by the owner with the Registrar and not disallowed. Idem

(3) The Registrar, upon receiving a price list, may disallow, within thirty days after the list is filed, any price that, in the opinion of the Registrar, is excessive or significantly higher than current market price for the supplies, services or rights within the applicable area. Approval of list

(4) The Registrar shall give immediate written notice to the owner who filed the price list of any price on the list that is disallowed and, in the notice, shall give the reasons for the disallowance. Notice of disallowance

(5) If the Registrar disallows a price on a price list, the owner who filed the list may appeal the disallowance to the Tribunal. Appeal

(6) An owner who has charged any person a price that is disallowed by the Registrar shall pay, forthwith, to that person the difference between the price charged and the price allowed. Repayment

**28.—**(1) If the Registrar believes, on reasonable and probable grounds, that any person licensed under this Act has made a false or misleading public representation or a representation that is in contravention of this Act or the regulations, the Registrar shall order that person to stop making the representation and, in the order, shall set out the reasons for the order. Advertising

(2) A person who receives an order under subsection (1) shall immediately comply with the order and shall refrain from making the representation, in any form, in the future. Compliance with order

(3) Any person who receives an order under subsection (1) may appeal the order to the Tribunal. Appeal

(4) The Tribunal may issue a stay of any order made by the Registrar under subsection (1). Stay of order

**29.—**(1) No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract for the Soliciting prohibited



purchase of interment rights or cemetery supplies or services be made.

Idem

(2) No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract for the purchase of interment rights or cemetery supplies or services be made.

Exception

(3) This section does not prohibit any contact made at the request of the person being contacted.

Regulations

(4) The Lieutenant Governor in Council may make regulations defining "contract" for the purpose of this section.

Abandoned  
interment  
rights

**30.**—(1) A cemetery owner may apply to the Registrar for a declaration that interment rights are abandoned.

Idem

(2) An application may be made under subsection (1) only in respect of interment rights that had been sold at least twenty years before the application and have not been used.

Inquiry

(3) The Registrar, on receiving an application under subsection (1), shall make such inquiry and direct the applicant to give such notices as seem reasonable in the circumstances.

Declaration

(4) Upon being satisfied that the rights are abandoned, the Registrar shall issue a declaration to that effect.

Notice

(5) The Registrar shall give notice of the declaration or the decision to not make the declaration to the applicant and to every person who has indicated to the Registrar an interest in the matter.

Appeal

(6) Any person who has an interest in the matter may appeal the decision of the Registrar to the Tribunal within thirty days after notice of the decision is given under subsection (5).

Right to sell  
abandoned  
rights

**31.** A cemetery owner may resell interment rights that have been declared abandoned,

(a) if there is no appeal, at the end of the time for appeal; or

(b) if there is an appeal, when the appeal has been finally determined supporting the declaration.

Rights  
holder's  
protection

**32.**—(1) Any person whose interment rights have been resold after being declared abandoned may apply to the Registrar for redress.

(2) The Registrar, upon receiving an application under subsection (1), shall order the cemetery owner or the owner's successor, as the case may be, to provide, subject to subsection (6), better or equivalent interment rights in that cemetery or to refund an amount determined as prescribed. Idem

(3) Any person whose interment rights have been declared abandoned but have not been resold may apply to the Registrar to have those rights restored. Idem

(4) The Registrar, upon receiving an application under subsection (3), shall order that the declaration be cancelled and that the rights be restored to the person entitled thereto. Idem

(5) This section does not apply in respect of interment rights in cemeteries that are abandoned. Exception

(6) If the cemetery referred to in subsection (2) is one in which interment rights are not available but the owner owns a cemetery in which interment rights are available, the applicant shall be given the option of accepting better or equivalent interment rights in that cemetery. Idem

**33.—**(1) If a marker has been erected on a lot that is the subject-matter of a declaration of abandonment, the cemetery owner shall remove and store it at the owner's expense for at least twenty years. Markers

(2) If an order is made under subsection 32 (2) to provide alternate interment rights, the cemetery owner shall re-erect the marker at the new site at the owner's expense. Idem

(3) If subsection (2) does not apply, the cemetery owner may dispose of the marker at the expiration of the twenty-year period. Idem

**34.—**(1) A cemetery owner who has available space shall provide, upon receiving a written instruction from a welfare administrator, Assisted burials, cemetery

(a) a lot for the interment of the remains of any person referred to in the instruction;

(b) opening and closing services in conjunction with the interment; and

(c) such other related services as are prescribed.

(2) A crematorium owner shall provide, upon receiving a written instruction from a welfare administrator, Crematorium

- (a) a crematorium service for the remains of any person referred to in the instruction; and
- (b) such other related services as are prescribed.

## Exception

(3) Subsections (1) and (2) do not apply to require a religious organization to inter or cremate the remains of a person who is disentitled to burial or cremation in a cemetery or crematorium owned by that organization.

## Payment

(4) An owner who provides a service under this section is entitled to be paid the prescribed amount for the service by the welfare administrator.

## Welfare administrator

(5) The Lieutenant Governor in Council may make regulations defining “welfare administrator” for the purpose of this section and designating persons by title or job description who are considered welfare administrators for this purpose.

## TRUST FUNDS

Care and maintenance trust funds  
1987, c. 33

**35.—**(1) Every cemetery owner who sells, assigns or transfers interment rights shall establish with a corporation registered under the *Loan and Trust Corporations Act, 1987*, with that corporation as trustee, a trust fund designated the “Care and Maintenance Fund” for the purpose of providing money for the care and maintenance of the cemetery.

## Payments into fund

(2) An owner who is required to establish a fund under this section shall pay into the fund prescribed amounts within the prescribed times.

## Payments out of fund

(3) A trustee of a fund established under this section shall pay the income from the fund, after deducting therefrom the trustee’s fees, to the owner of the cemetery involved.

## Use of money

(4) An owner receiving money pursuant to subsection (3) shall use the money for the upkeep of the cemetery and the markers and structures therein in the prescribed manner.

## Capital portion

(5) No trustee of a fund established under this section shall pay out any of the capital portion of the fund.

## Idem

(6) Subsection (5) does not apply to preclude a trustee from transferring the fund, with the consent of the Registrar, to another trustee.

## Municipal owners

(7) Despite subsection (1), an owner that is a municipality may act as the trustee of a Care and Maintenance Fund established by that municipality.



**36.—(1)** Every owner who sells pre-need cemetery supplies or services shall establish with a corporation registered under the *Loan and Trust Corporations Act, 1987*, with that corporation as trustee, a trust fund designated as the “Pre-need Assurance Fund”.

Pre-need  
assurance  
trust funds  
1987, c. 33

(2) Subsection (1) applies to an owner in respect of sales made by a person that the owner is associated or affiliated with in a manner that is prescribed.

Idem

(3) An owner who is required to establish a fund under this section shall pay into the fund all money received for pre-need supplies or services within the prescribed times.

Payments  
into fund

(4) A trustee of a fund established under this section shall hold all money received for the benefit of the purchaser until that portion of the contract in respect of which the money was paid is completed.

Trust funds

(5) When a portion of a contract is completed, the trustee shall pay to the owner the lesser of,

Idem

(a) the current market price filed with the Registrar for the supplies or services; or

(b) an amount equal to the payments made for the supplies or services together with income accrued on those payments.

(6) If the amount referred to in clause (5) (b) exceeds the price referred to in clause (5) (a), the trustee shall pay the amount of the excess to the owner.

Idem

(7) If a contract in respect of which money is held in the trust fund is cancelled, the trustee shall pay, to the owner, the amount of the initial payments together with income accrued on that amount.

Prior  
cancellation

(8) Subject to subsection 24 (4) (retention of service fee), an owner who receives a payment under subsection (7) shall pay the amount to the purchaser involved within twenty days after receiving the payment.

Payment to  
purchaser

(9) An owner who receives a payment under subsection (6) shall pay the amount to the purchaser or, if an interment has taken place, to the estate of the person interred within twenty days after receiving the payment.

Idem

Municipal  
owners

(10) Despite subsection (1), an owner that is a municipality may act as the trustee of a Pre-need Assurance Fund established by that municipality.

Restrictions  
on trust  
agreements  
R.S.O. 1980,  
c. 512

**37.** No investment of money in a trust established pursuant to this Act shall be made except as permitted under the *Trustee Act*.

Marker  
installation

**38.**—(1) Every person installing a marker in a cemetery shall pay to the cemetery owner the prescribed amount.

Payment into  
fund

(2) An owner receiving money pursuant to subsection (1) shall pay the money into the Care and Maintenance Fund established for that cemetery.

Idem

(3) An owner who does not receive payment under subsection (1) for a marker shall pay into the Care and Maintenance Fund a prescribed amount.

Trust funds  
held by  
owner

**39.**—(1) All money received by an owner that is required to be paid into a trust fund but that is not immediately turned over to a trustee of a trust fund shall be deposited by the owner in a trust account with a credit union or caisse populaire registered under the *Credit Unions and Caisses Populaires Act*, a chartered bank of Canada, the Province of Ontario Savings Office or a trust or loan corporation registered under the *Loan and Trust Corporations Act, 1987*.

R.S.O. 1980,  
c. 102

1987, c. 33

Idem

(2) Money deposited by an owner in a trust account under subsection (1) shall be placed by the owner into a trust fund or otherwise paid out in accordance with this Act or the regulations within the time prescribed.

Providing  
information,  
etc.

**40.**—(1) The Registrar or the Public Trustee may require any owner or trustee to provide,

- (a) any information on trust accounts or trust funds that the owner or trustee is involved with; and
- (b) audited financial statements on any trust account or trust fund relating to a cemetery or crematorium that the owner or trustee is involved with.

Idem

(2) Every owner or trustee who receives a request pursuant to subsection (1) shall forthwith provide all the information or statement required or an explanation as to why it is not possible to provide the information or statement.

Surrogate  
Court

**41.**—(1) The Registrar or the Public Trustee may apply to the Surrogate Court to pass the accounts of any trust fund.

(2) The court, on passing any account, may review and pass upon any agreement made by an owner of a cemetery or crematorium. Idem

(3) The court, on passing any account, may make any order that it considers necessary to ensure that the trust is carried out. Idem

**42.** No cemetery or crematorium owner shall charge or receive any compensation or payment for the effort or expense of establishing or maintaining a trust fund. No compensation to owner

**43.—**(1) Despite subsections 35 (1) and 36 (1), an owner who does not have a practical alternative may require the Public Trustee to act as a trustee for that owner's Care and Maintenance Fund or Pre-need Assurance Fund. Use of Public Trustee

(2) The Registrar and the Public Trustee have an interest in all trust funds. Interested parties

#### CEMETERY AND CREMATORIUM OPERATIONS

**44.—**(1) Every cemetery owner shall maintain, without charge to interment rights holders, the grounds of the cemetery, including all lots, structures and markers, to ensure the safety of the public and to preserve the dignity of the cemetery. Maintenance by cemetery owner

(2) Despite subsection (1), an owner of a non-commercial cemetery may charge interment rights holders, at a rate approved by the Registrar, for the maintenance of lots and markers that were sold before 1955 if there were no trust funds collected for that purpose. Exception

**45.** No owner shall carry on business, in a manner prescribed, in conjunction with a person licensed to operate a funeral establishment or transfer service. Operating with funeral establishment, etc.

**46.** Every cemetery owner shall ensure that all interments in the cemetery are carried out in a decent and orderly manner and that quiet and good order are maintained in the cemetery at all times. Good order

**47.** No person shall inter human remains except in a cemetery that has been consented to by the Registrar and is owned by an owner licensed under this Act. Interment in cemetery only

**48.** If a marker in a cemetery presents a risk to public safety because it is unstable, the owner of the cemetery shall Repairing markers



do whatever is necessary by way of repairing, resetting or laying down the marker so as to remove the risk.

Mortgage on  
cemetery

**49.**—(1) No encumbrance or charge on a cemetery or crematorium is enforceable unless it was given as security for money borrowed for,

- (a) the purpose of improving the facilities provided;
- (b) the purpose of acquiring land for a cemetery or crematorium; or
- (c) a purpose, approved by the Registrar, relating to the operation of the cemetery or crematorium.

Restriction

(2) No encumbrancer claiming an interest in a cemetery or crematorium may deal with the cemetery or crematorium except in accordance with this Act.

By-laws

**50.**—(1) No person shall operate a cemetery or crematorium except in accordance with the by-laws applying to that cemetery or crematorium.

Owner's  
by-laws

(2) An owner of a cemetery or crematorium may make by-laws affecting the operation of the cemetery or crematorium.

When  
effective

(3) No by-law made by an owner is effective until it is filed with and approved by the Registrar.

Prescribed  
by-laws

(4) The Lieutenant Governor in Council may make regulations prescribing by-laws that apply to cemeteries or crematoria or to any prescribed classes of cemeteries or crematoria.

Notice of  
by-laws

(5) An owner filing a by-law shall give such notice as is prescribed to such classes of persons as are prescribed.

Approval by  
Registrar

(6) A by-law filed with the Registrar under this section shall be approved by the Registrar unless the approval is not in the public interest or the effect of the by-law is to give the owner an unreasonable or unfair competitive advantage over another supplier of cemetery services or supplies.

Revocation  
of by-laws

(7) The Registrar may revoke any by-law that the Registrar could have refused to approve under subsection (6).

Idem

(8) Subsection (7) applies even though the Registrar has previously approved the by-law.

Notice of  
disallowance  
or revocation

(9) If the Registrar intends to refuse to approve or revoke a by-law, the Registrar shall give the owner notice of the inten-

tion and, at the same time, advise the owner of the right to appeal.

(10) An owner who receives a notice under subsection (9) may appeal the intended refusal or revocation to the Tribunal within fifteen days after receiving the notice. Appeal

(11) If an appeal is filed against an intended revocation, the Registrar shall not revoke the by-law unless the Tribunal determines that the by-law should be revoked. Delay in revocation

(12) If no appeal is filed against an intended revocation, the Registrar may revoke the by-law after the time for appeal has expired. Where no appeal

**51.**—(1) Subject to subsection (2), no person shall disinter any human remains without, Disinterment

(a) the prior consent of the interment rights holder; and

(b) notifying the proper medical officer of health.

(2) Subsection (1) does not apply to a disinterment ordered by, Where consent not required

(a) a court of competent jurisdiction;

(b) a coroner appointed under the *Coroners Act*; R.S.O. 1980, c. 93

(c) the Attorney General or Solicitor General for Ontario; or

(d) the Registrar under section 9.

(3) For the purpose of clause (1) (a), the consent of the Registrar may be substituted for that of the interment rights holder if, Idem

(a) the whereabouts of an interment rights holder are not known;

(b) the interment rights holder is not readily ascertainable; or

(c) the interment rights holder is not able to consent.

(4) No person shall disinter human remains except in accordance with the regulations. Compliance with regulations

Exception (5) Clause (1) (b) does not apply to the disinterment of cremated human remains.

Consent of Registrar **52.**—(1) The Registrar, before consenting to a disinterment, shall consider whether any known person may have an interest in the disposition of the remains and, if there may be such a person, shall order that notice of the intention to disinter be given.

Notice of intention (2) A notice of intention to disinter shall be given in the manner and form set out in the order.

Objections (3) Any person objecting to a disinterment may file a written objection with the Registrar at any time before the consent of the Registrar is given.

Idem (4) If any person files an objection to a disinterment, the Registrar shall determine whether that person has an interest in the remains and, if so, shall ascertain the person's wishes.

Conditions for consent (5) In giving a consent to a disinterment, the Registrar shall take into account the wishes of any person with an interest in the remains and make the consent subject to such conditions as the Registrar considers appropriate.

Notice of decision (6) Notice of the Registrar's decision shall be given to the person who applied for the consent, to any person to whom notice is given under subsection (1) and to any person filing an objection.

Appeal (7) A person receiving a notice under subsection (6) may appeal, to the Tribunal, the Registrar's decision within fifteen days after receiving the notice.

Delay (8) If an appeal is filed under subsection (7), the Registrar shall not consent to the disinterment unless the Tribunal determines that the disinterment should proceed.

Where no appeal (9) If no appeal is filed under subsection (6), the Registrar may consent to the disinterment after the time for appeal has expired.

Attendance by medical officer **53.**—(1) A medical officer of health has the authority to attend at, supervise and direct a disinterment.

Diseases (2) If a medical officer of health determines that remains are those of a person who died of a communicable disease within the meaning of the *Health Protection and Promotion Act, 1983*, the remains shall not be dealt with in any way except as prescribed by the regulations made under that Act.



**54.** No person shall remove human remains from a cemetery unless a certificate of a medical officer of health or the cemetery owner confirming that this Act and the regulations have been complied with is affixed to the container.

Certificate  
required

**55.** A burial certificate under the *Vital Statistics Act* is not required to reinter human remains that have been disinterred in accordance with this Act and the regulations.

R.S.O. 1980,  
c. 524,  
does not  
apply

**56.—(1)** No person shall cremate human remains except in a crematorium that has been established with the consent of the Registrar and is owned by an owner licensed under this Act.

Cremation

(2) No person shall cremate human remains,

Prohibitions

(a) for which there is not a coroner's certificate supplied by the Ministry of Consumer and Commercial Relations;

(b) in a container made of, or containing, non-flammable or hazardous material or a prescribed material; or

(c) in which a pacemaker or other prescribed device is implanted.

(3) Except if required by a welfare administrator or for the purpose of compliance with this Act or the regulations made under this Act, a crematorium owner has the right to refuse to cremate any human remains.

Right to  
refuse

**57.** Every crematorium owner shall ensure that all cremations in the crematorium are carried out in a decent and orderly manner and that quiet and good order are maintained in the crematorium at all times.

Good order

**58.—(1)** Any person who purchases a cremation service shall deposit, at the request of the crematorium owner, a prescribed amount with the owner to cover the cost of interring the cremated remains.

Deposit re  
disposal

(2) An owner receiving money under subsection (1) shall hold the money in trust.

Held in trust

(3) If the cremated remains are claimed by the interment rights holder within one year after the cremation, the owner shall refund the money to the person entitled thereto at the time of the claim.

Refund

Owner's  
compensation

(4) If, after one year, the cremated remains have not been claimed and the owner has made reasonable efforts to contact the representatives of the deceased, the owner may inter them and is then entitled to the money held in trust as compensation.

Neglected  
cemetery

**59.**—(1) A municipality may order a cemetery owner who does not keep the cemetery in good order and repair to restore it to good order and repair.

Appeal

(2) An owner may appeal, to the Registrar, an order to restore within fifteen days after receiving the order.

Idem

(3) The Registrar, on receiving an appeal, shall invite submissions from the owner and the municipality and shall make such other inquiries as are appropriate in the circumstances.

Idem

(4) After considering submissions made and the circumstances, the Registrar shall confirm or reverse the order of the municipality or substitute his or her order for that of the municipality.

R.S.O. 1980,  
c. 484  
does not  
apply  
Repairs

(5) The *Statutory Powers Procedure Act* does not apply to an appeal under this section.

(6) If an owner does not restore a cemetery as specified in an order given under subsection (1) within such reasonable time as is set out in the order, the municipality may have the required work done and recover the costs thereof from the owner.

Abandoned  
cemetaries

**60.**—(1) An application to declare a cemetery abandoned may be made to a judge of the District Court if the owner of the cemetery,

(a) cannot be found or is unknown;

(b) is unable to maintain it;

(c) was a corporation that was dissolved; or

(d) is not licensed as an owner under this Act.

Application

(2) An application to declare a cemetery abandoned may be made by the owner of the cemetery, the municipality or the Registrar.

Notice of  
application

(3) An applicant under subsection (2) must give notice of the application to the other persons referred to in subsection (2).

(4) The municipality is responsible for the cost of an application under this section including the cost of a survey of the land involved. Costs

(5) Despite subsection (4), an owner who makes an unsuccessful application is responsible for the costs referred to in subsection (4). Idem

(6) A judge to whom an application is made under subsection (1), upon being satisfied that there is a basis for the application, shall, by order, declare the cemetery that is the subject-matter of the application to be abandoned. Declaration

(7) Upon a declaration that a cemetery is abandoned being registered in the appropriate land registry office, the municipality becomes the owner of the cemetery with all the rights and obligations in respect to the cemetery and the assets, funds and trust accounts related thereto that the previous owner had. Municipality becomes owner

(8) A declaration under this section may exempt the municipality being declared the owner from any provision of this Act or the regulations that it would be inappropriate, in the circumstances, for a new owner to be subject to. Exemptions

(9) Upon an application being made to declare a cemetery abandoned, the municipality within which the cemetery is situated is responsible for the maintenance of the cemetery until the application is disposed of. Maintenance

**61.** The Registrar may require any owner who has an interest in a cemetery that appears to be abandoned or neglected to maintain that cemetery as a condition of retaining a licence to own a cemetery or crematorium. Dual interest

#### ADMINISTRATION

**62.—(1)** There shall be a Registrar appointed for the purposes of this Act. Registrar

(2) There shall be one or more Deputy Registrars appointed who may exercise such powers and perform such duties of the Registrar as are delegated by the Registrar. Deputy Registrars

(3) The Registrar, Deputy Registrars and all other employees necessary for the administration of this Act shall be appointed under the *Public Service Act*. Application of R.S.O. 1980, c. 418



## Inspectors

**63.—**(1) The Registrar may appoint inspectors to carry out inspections for the purpose of determining whether there is compliance with this Act and the regulations.

## Certificate of appointment

(2) An inspector exercising a power under this Act shall, on request, produce his or her certificate of appointment.

## Inspections

**64.—**(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may,

- (a) enter any place at any reasonable time;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) inspect and, upon giving a receipt therefor, remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (d) inquire into negotiations, transactions, loans or borrowings of a licensee and into assets owned, acquired or disposed of by a licensee that are relevant to an inspection;
- (e) conduct such tests as are reasonably necessary to determine the integrity of a structure, fence or marker in a cemetery; and
- (f) remove materials or substances for examination or test purposes subject to the licensee or other occupant of the premises being notified thereof.

## Entry to dwellings

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier.

## Warrant

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant,

- (a) to do anything set out in clause (1) (a), (c), (e) or (f);
- (b) to enter and search a room actually used as a dwelling; or
- (c) to search for and seize any document or thing relevant to the inspection.

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that in the case of a warrant to be issued under, Requirements for warrant to issue

(a) clause (3) (a), an inspector has been prevented from doing anything permitted under clause (1) (a), (c), (e) or (f) or there is reasonable ground to believe that an inspector may be prevented from doing any of those things;

(b) clause (3) (b), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe is relevant to an inspection under this Act; or

(c) clause (3) (c), it is necessary to search for and seize a document or thing that there is reasonable ground to believe will afford evidence relevant to a contravention of this Act or the regulations.

(5) A warrant issued under this section shall specify the hours and days during which it may be executed. Execution of warrant

(6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made. Expiry

(7) A warrant under this section may be issued or renewed upon application without notice. Notice not required

(8) A warrant under this section may be renewed for any reason for which it may be issued. Renewal of warrant

(9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant. Assistance

(10) An inspector carrying out an inspection, with or without a warrant, may be accompanied by such persons with expertise in the subject-matter of the inspection as the inspector considers necessary. Use of experts

(11) An investigator taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken. Copies

(12) Copies of, or extracts from, documents and things removed under this section and certified as being true copies Admissibility of copies

of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Obstruction  
of inspector

**65.**—(1) No person shall obstruct an inspector in carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.

Facilitating  
inspection

(2) It is a condition of each licence issued under this Act that the licensee facilitate an inspection relevant to that licence.

Freezing  
assets

**66.**—(1) If the Director has reasonable and probable grounds to believe that the owner of a cemetery or crematorium is doing or is about to do something that will jeopardize the public interest or the proper care and maintenance of a cemetery, the Director may direct any person holding, having on deposit or controlling assets of the owner or trust funds under the control of the owner to hold the assets or trust funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Scope of  
direction

(2) In the case of a bank or a corporation, a direction under subsection (1) applies only to the offices, branches or agencies thereof named in the direction.

Application  
for directions

(3) Any person named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular assets or trust funds, may apply to the Director for an order of clarification.

Revocation  
or  
amendment  
of direction

(4) On an application of the owner or any other person having an interest therein, the Director may make an order on such conditions as are set out in the order revoking the direction or consenting to the release of a particular asset or trust fund from the direction.

Appeal

(5) Any person affected by a direction or order of the Director made under this section or a refusal to make an order may appeal to the Tribunal.

Restraining  
order

**67.**—(1) If the Director is of the opinion that any person is not complying with this Act or the regulations, despite the imposition of any penalty in respect of the non-compliance and in addition to any other remedy available, the Director may apply to a judge of the High Court for an order directing the person to comply.



(2) Upon an application under subsection (1), the judge <sup>Idem</sup> may make the order applied for or such other order as the judge thinks appropriate.

(3) An appeal lies to the Divisional Court from an order <sup>Idem</sup> made under subsection (2).

#### BURIAL SITES

**68.** No person shall disturb or order the disturbance of a <sup>Disturbing burial site prohibited</sup> burial site or artifacts associated with the human remains except,

- (a) on instruction by the coroner; or
- (b) pursuant to a site disposition agreement.

**69.** Any person discovering or having knowledge of a <sup>Unmarked burial sites</sup> burial site shall immediately notify the police or coroner.

**70.—**(1) The Registrar may order the owner of land on <sup>Investigation</sup> which a burial site is discovered to cause an investigation to be made to determine the origin of the site.

(2) Section 68 does not apply to a person investigating the <sup>Idem</sup> nature or origin of the site who is disturbing the site in the course of the investigation.

(3) A person conducting an investigation shall do so with <sup>Idem</sup> the minimum disturbance to the site that is reasonable in the circumstances.

(4) If the Registrar is of the opinion that an investigation <sup>Idem</sup> under subsection (1) would impose an undue financial burden on the land owner, the Registrar shall undertake the investigation.

**71.—**(1) As soon as the origin of a burial site is deter- <sup>Declaration</sup> mined, the Registrar shall declare the site to be,

- (a) an unapproved aboriginal peoples cemetery;
- (b) an unapproved cemetery; or
- (c) an irregular burial site.

(2) For the purpose of subsection (1),

<sup>Interpretation</sup>

- (a) an irregular burial site is a burial site that was not set aside with the apparent intention of interring therein human remains;
- (b) an unapproved cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of the aboriginal peoples of Canada;
- (c) an unapproved aboriginal peoples cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the aboriginal peoples of Canada.

## Definition

(3) For the purposes of this section and section 72, “unapproved” means not approved in accordance with this Act or a predecessor of this Act.

## Site disposition agreement

**72.**—(1) The Registrar, on declaring a burial site to be an unapproved aboriginal peoples cemetery or an unapproved cemetery, shall serve notice of the declaration on such persons or class of persons as are prescribed.

## Idem

(2) All persons served with notice under subsection (1) shall enter into negotiations with a view of entering into a site disposition agreement.

## Idem

(3) If a site disposition agreement is not made within the prescribed time, the Registrar shall refer the matter to arbitration.

## Idem

(4) Despite subsection (3), the Registrar, if of the opinion that an agreement may be reached, may defer referring the matter to arbitration so long as there appears to be a reasonable prospect of an agreement being reached.

## Arbitrated settlement

**73.** The persons named in an arbitrated settlement who have been given the opportunity to fully participate in the arbitration process are bound by the settlement whether they chose to participate or not.

## Irregular burial site

**74.**—(1) An owner of land that contains an irregular burial site shall ensure that the remains found in the site are interred in a cemetery.

(2) No owner of a cemetery interring human remains for an owner of land to whom this section applies may charge more than the prescribed amount for the interment. Charges

**75.**—(1) No person shall alter or move the remains or marker of a Canadian or Allied veteran or a Commonwealth War Burial without the agreement of the Department of Veterans Affairs (Federal), the Commonwealth War Graves Commission or such other persons and associations as are prescribed. War Graves

(2) Subsection (1) applies with respect to the alteration or removal of the remains or a marker of a Canadian or Allied veteran only if the Department of Veterans Affairs (Federal) contributed to the cost of the interment. Idem

(3) If an agreement is not reached, the person who wants to make the alteration or move may apply to the Registrar for directions. Idem

(4) When an application is made under subsection (3), the Registrar shall instruct the applicant to give notice of the application to such persons and associations as the Registrar considers may have an interest in the matter. Idem

(5) All persons and associations receiving a notice under subsection (4) may make submissions on the matter to the Registrar in such form and manner as the Registrar instructs. Idem

(6) After considering all submissions made, the Registrar shall direct the applicant on the manner of dealing with the remains or marker in question. Idem

(7) Subsection (1) does not apply to a person altering or moving remains or markers in accordance with the direction of the Registrar. Idem

**76.**—(1) The Lieutenant Governor in Council may make regulations, Regulations

1. prescribing documents, information and notices to be provided in the course of an application;
2. prescribing fees and requiring the payment of fees;
3. providing for the manner in which a deposit required for approval shall be applied or returned;
4. prescribing classes of cemeteries;



5. prescribing, for any notice required to be given under this Act, the type of notice and the manner in which it is to be given;
6. prescribing requirements and standards for the placing and spacing of interments, markers, fixtures, fences or other structures in a cemetery;
7. prescribing the minimum depth of coverage for in-ground burials;
8. prescribing the drains, sewers and other structures for the flow of water required in a cemetery;
9. governing mausolea, columbaria and other structures on or in a cemetery and establishing construction standards;
10. prescribing classes and types of licences;
11. governing the issue of licences and providing for the renewal of licences;
12. governing the term during which each class or type of licence is valid;
13. prescribing conditions that attach to any class or type of licence;
14. providing for posting of bonds and prescribing the amounts thereof;
15. providing for the forfeiture of posted bonds and for the distribution of the proceeds of forfeited bonds;
16. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity;
17. requiring the approval of the Registrar for promotional and sales material and prescribing the criteria for approval;
18. prescribing the type of promotional and sales material that requires the approval of the Registrar and providing for its submission to the Registrar;
19. governing and prohibiting the use of any promotional or sales material or any practice;

20. prescribing records and information to be kept by licensees;
21. providing for and requiring the submission of records and information and providing for access by agents of the Registrar to records and information;
22. prescribing the form of and conditions to be included in contracts for the sale of interment rights and cemetery supplies and services;
23. prescribing the information to be supplied to purchasers of interment rights and cemetery supplies and services;
24. prescribing the form of and information to be included in certificates of interment rights;
25. prescribing information to be provided to the public, any person or any class of persons and prescribing the manner of providing that information;
26. governing advertising and the manner of soliciting business;
27. requiring the use of any prescribed forms;
28. governing the use of contracts and certificates;
29. governing the uses to which owners may apply income from Care and Maintenance Funds;
30. prescribing records and information on trust funds to be provided to purchasers of interment rights and pre-need supplies or services;
31. governing the establishment, maintenance and operation of trust funds including the Care and Maintenance Fund and the Pre-need Assurance Fund;
32. governing the payment of money into and out of trust funds including the time within which and the circumstance under which payments are to be made;
33. prescribing fees that may be retained by trustees in respect of any type of trust fund;
34. governing the interment, disinterment, disposition and removal of human remains;

35. governing the preparation of disinterred human remains for transportation including prescribing the design and material of container to be used;
36. prescribing standards for the construction, installation, stabilization and preservation of markers and other cemetery supplies and requiring compliance with the standards;
37. governing the standards of care and maintenance required for a cemetery;
38. governing the procedure for approving by-laws made by owners and for revoking any by-laws made by owners;
39. prescribing the criteria that the Registrar shall use in approving by-laws;
40. governing the manner of conducting cremations and dealing with cremated remains;
41. prescribing amounts to be deposited, in trust, to compensate for disposing of cremated remains and regulating the handling of the trust moneys;
42. governing the location and ownership of cemeteries and crematoria;
43. governing prices and the range of prices that may be included on price lists filed with the Registrar by owners;
44. prescribing procedures to be followed in dealing with burial sites and requiring that they be followed;
45. governing arbitration in the absence of a site disposition agreement and requiring compliance with prescribed procedure;
46. prescribing the subject-matters to be contained in a site disposition agreement or arbitration settlement and requiring their inclusion;
47. exempting any person or class of persons, any cemetery or class of cemetery or anything or class of thing from any provision of this Act or the regulations;



48. prescribing conditions subsequent or precedent for a prescribed exemption and providing that an exemption may be subject to the Registrar being satisfied that it is not contrary to the public interest;
49. prescribing what constitutes notice in any provision where notice is required to be given;
50. governing the time for giving any notice for which a time is not set out in this Act and delegating to the Registrar power to extend any prescribed time;
51. prescribing anything that is referred to in this Act as being prescribed.

(2) Any regulation may be general or specific or of limited application. Limitation

**77.** No person shall cause or commit a nuisance in a cemetery or wilfully and unlawfully disturb persons assembled for the purpose of interring human remains in a cemetery. Interfering with cemetery

**78.—(1)** Any person who, in a cemetery, damages or moves any tree, plant, marker, fence, structure or other thing usually erected, planted or placed in a cemetery is liable to the cemetery owner and any interment rights holder who, as a result, incurs damage. Cause of action

(2) In an action under subsection (1), the amount of damages shall be the amount required to restore the cemetery to the state that it was in before anything was damaged or moved by the person liable. Idem

(3) Any person collecting damages under this section shall use the full amount collected to restore the cemetery. Idem

**79.—(1)** Every person who, Offence

- (a) furnishes false, misleading or incomplete information in an application under this Act or in a statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with an order made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence.

Idem (2) Every director or officer of a corporation who concurs in an offence under this Act is guilty of an offence.

Idem (3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$20,000 and, on a subsequent conviction, to a fine of not more than \$20,000 and to imprisonment for a term of not more than one year.

Idem (4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$40,000.

Limitation (5) Subject to subsection (6), no proceeding under this section shall be commenced more than two years after the offence was committed.

Idem (6) No proceeding under clause (1) (a) or subsection 35 (2) or 36 (3) or section 68 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Registrar.

Restitution (7) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Certificate as evidence

**80.** A statement as to,

- (a) the consent or lack of consent to establish, alter or increase the capacity of a cemetery or crematorium;
- (b) the licensing or non-licensing of any person;
- (c) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (d) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or
- (e) any other matter pertaining to licensing, non-licensing, filing or non-filing,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, admissible in evidence in any proceeding, in the absence of evidence to the contrary, of the facts stated therein.

Municipal powers

**81.—**(1) A municipality may expropriate,

(a) a cemetery or part thereof, whether the cemetery exists within or outside the municipality; and

(b) land on which to establish or enlarge a cemetery.

(2) The council of a municipality may pass by-laws author- Idem  
izing,

(a) the purchase of a cemetery or part thereof that is situated within the municipality;

(b) the acquisition of land within the municipality or in an adjacent township or unorganized territory for a cemetery or for the enlargement of an existing cemetery owned by the municipality; or

(c) the sale, transfer or lease of a cemetery or part thereof.

**82.**—(1) If there is an appeal under this Act to the Tribunal  
Tribunal, it shall appoint a time for and hold a hearing.

(2) After holding a hearing, the Tribunal may by order Order  
direct the Registrar to take an intended action or to refrain from taking an action or to take such action as the Tribunal considers that the Registrar ought to take and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

(3) The Tribunal may attach such conditions to its order or Conditions  
to the licence as it considers proper to give effect to the purposes of this Act.

(4) The Registrar, the applicant or licensee who has Parties  
required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this Act.

**83.**—(1) A notice, order or other document under this Service  
Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at that person's last known address.

(2) A notice, order or other document sent by first class Idem  
mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that the notice, order or other document was not received until a



later date because of absence, accident, illness or other cause beyond that person's control.

Stay

R.S.O. 1980,  
c. 274

**84.** Despite the fact that a licensee appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Surrender of  
licence

**85.** The Registrar may, at any time, cancel a licence upon the written request of the licensee and the surrender of the licence by the licensee.

Transition

**86.**—(1) An approval given under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, shall be deemed to be a consent given under this Act.

Idem

(2) Every person who is an owner on the day this Act comes into force shall be deemed to be licensed under this Act to own the cemetery or crematorium.

Idem

(3) Every person who was employed as a sales representative selling interment rights, cemetery supplies or cemetery services on the day this Act comes into force shall be deemed to be licensed as a sales representative under this Act representing the owner employing that person.

Idem

(4) Subject to subsection (5), subsections (2) and (3) cease to apply one year after this Act comes into force.

Idem

(5) If a person who is deemed, under subsection (2) or (3), to be licensed under this Act applies for a comparable licence under this Act within one year after this Act comes into force, the deemed licence remains in force until the application is finally disposed of.

Idem

(6) Funds set up under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, for,

(a) perpetual care shall be deemed to be a Care and Maintenance Fund; and

(b) pre-need supplies or services shall be deemed to be a Pre-need Assurance Fund.

Act prevails

**87.** This Act prevails over Part VI of the *Ontario Heritage Act*, being chapter 337 of the Revised Statutes of Ontario, 1980.

**88.** Section 1 of *The Toronto General Burying Grounds Act, 1977*, being chapter 110, is repealed and the following substituted therefor:

**1.** The Trustees of the Toronto General Burying Grounds may, in addition to its existing powers to acquire and hold land, acquire and hold land and may exercise all its corporate powers with reference thereto. Power to  
acquire land

**89.** The *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, is repealed. Repeal

**90.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

**91.** The short title of this Act is the *Cemeteries Act, 1989*. Short title





## CHAPTER 51

### An Act respecting the Township of South Dumfries

*Assented to October 16th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The area served by The Hydro-Electric Commission of South Dumfries, as established under subsection 5 (2) of *The Police Village of St. George Act, 1980*, is increased by adding to it the lands described in the Schedule.

Expansion of  
area served  
by The  
Hydro-  
Electric  
Commission  
1980, c. 45

**2.** The urban service area established under section 6 of *The Police Village of St. George Act, 1980* includes the land described in the Schedule and any land added by the Ontario Municipal Board under section 3.

Urban  
service area

**3.—(1)** Upon the application of The Corporation of the Township of South Dumfries, the Ontario Municipal Board may alter the boundary of the urban service area.

Boundaries  
of urban  
service area

(2) Section 15 of the *Municipal Act* applies with necessary modifications to an application under subsection (1).

Application  
of  
R.S.O. 1980,  
c. 302, s. 15

(3) Sections 94 and 95 of the *Ontario Municipal Board Act* do not apply to a decision made in respect of an application under subsection (1).

R.S.O. 1980,  
c. 347,  
ss. 94, 95  
do not apply

**4.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**5.** The short title of this Act is the *Township of South Dumfries Act, 1989*.

Short title

## SCHEDULE

That portion of the Township of South Dumfries described as follows:

Commencing at a point in the westerly limit of County Road Number 13 distant 27.953 metres measured north  $77^{\circ} 13'$  east from the northeasterly angle of Lot 51 as shown on a Plan registered in the Land Registry Office for the Registry Division of Brant (No.2) as Number 1155;

Thence north  $16^{\circ} 10' 20''$  west along the westerly limit of the said Country Road 104.287 metres to a point;

Thence south  $76^{\circ} 49' 30''$  west 504.739 metres to a point;

Thence south  $76^{\circ} 49' 30''$  west 165 metres to a point;

Thence south  $15^{\circ} 56' 05''$  east 98.585 metres to a point;

Thence easterly in a straight line to the place of commencement.

CHAPTER 52

An Act respecting the  
Toronto Transit Commission Labour Disputes

*Assented to October 16th, 1989*

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Section	Section
1. Definitions	7. Wage increase
2. Application of Act	8. Non-application of certain Acts
3. Strike or lock-out to be terminated	9. Application of <i>Labour Relations Act</i> provisions
4. Appointment of fact-finder and arbitrator	10. Offence and penalties
5. Fact-finding	11. Costs
6. Arbitration	12. Commencement and repeal
	13. Short title

WHEREAS the Toronto Transit Commission and Local 113, Amalgamated Transit Union, Lodge 235, International Association of Machinists and Aerospace Workers and the Canadian Union of Public Employees, Local No. 2 were parties to collective agreements which have expired; and whereas the parties have bargained for new collective agreements and have exhausted the conciliation process under the *Labour Relations Act*; and whereas the parties have not settled the disputes and negotiations have reached an impasse; and whereas the disputes have adversely affected public transit service, and whereas the public interest and welfare requires that a means be provided to address the matters in dispute so that new collective agreements may be concluded and full public transit service can be restored;

Preamble

R.S.O. 1980,  
c. 228

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“employees” means the employees of the employer in the bargaining units represented by the unions;

“employer” means the Toronto Transit Commission;



“expiry date” means, in the case of the collective agreement between the employer and,

- (a) Local 113, Amalgamated Transit Union, the 30th day of June, 1989,
- (b) Lodge 235, International Association of Machinists and Aerospace Workers, the 31st day of March, 1989, and
- (c) the Canadian Union of Public Employees, Local No. 2, the 31st day of March, 1989;

“parties” means the employer and the unions;

“unions” means,

- (a) Local 113, Amalgamated Transit Union,
- (b) Lodge 235, International Association of Machinists and Aerospace Workers, and
- (c) Canadian Union of Public Employees, Local No. 2.

Idem

R.S.O. 1980,  
c. 228

(2) Unless a contrary intention appears, expressions used in this Act have the same meaning as in the *Labour Relations Act*.

Application  
of Act

**2.**—(1) This Act applies to the parties and to the employees.

Application  
of

R.S.O. 1980,  
c. 228

(2) Except as modified by this Act, the *Labour Relations Act* applies to the parties and to the employees.

Strike or  
lock-out  
to be  
terminated

**3.**—(1) Any strike or lock-out shall be terminated by the parties and the employees immediately upon the coming into force of this Act.

Work  
assignments

(2) Every employee shall report to work and shall perform his or her duties in accordance with his or her work assignment.

Normal  
operations

(3) The employer shall operate and continue to operate its undertakings to their normal extent, scope and capacity.

No strike or  
lock-out

(4) No person shall engage in, declare, authorize, counsel, threaten or acquiesce in any lock-out, strike or picketing or in any activity contrary to any provision of this Act.

(5) The employer shall not, except in accordance with this Act or with the consent of the unions, alter the rates of wages of the employees or any other term or condition of employment, or any right, privilege or duty of the unions or the employees, that was in operation on the expiry date.

Terms of employment not to be altered

(6) The unions shall not, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the unions or the employees, that was in operation on the expiry date.

Idem

(7) Any dispute between the parties as to whether subsections (5) and (6) have been complied with may be referred to arbitration by either party as if the collective agreements that were in force on the expiry date were still in operation, and sections 44 and 45 of the *Labour Relations Act* apply with necessary modifications thereto.

Compliance with subss. (5) and (6)

R.S.O. 1980, c. 228

4.—(1) The Lieutenant Governor in Council, upon the advice of the Minister of Labour, shall appoint,

Appointment of fact-finder and arbitrator

(a) a fact-finder who shall have exclusive jurisdiction to investigate and report on the matters referred to in section 5; and

(b) an arbitrator who shall have exclusive jurisdiction to hear and determine the matters referred to in section 6.

(2) The Lieutenant Governor in Council may appoint the person who is appointed to be the fact-finder to also act as the arbitrator.

Idem

(3) If the fact-finder is unable to perform his or her duties so as to enable a report to be made within the period of time mentioned in subsection 5 (6), the Lieutenant Governor in Council shall, upon the advice of the Minister of Labour, appoint another person to act as fact-finder and the process, except for any agreement or decision made under subsection 5 (2), shall begin anew.

Replacement of fact-finder

(4) If the arbitrator is unable to perform his or her duties so as to make an award within the period of time mentioned in subsection 6 (4), the Lieutenant Governor in Council shall, upon the advice of the Minister of Labour, appoint another person to act as arbitrator and the process shall begin anew.

Replacement of arbitrator

(5) The fact-finder shall determine his or her own procedure but, in respect of a decision under subsection 5 (2), shall permit the parties to present evidence and make submissions.

Procedure, fact-finder

Procedure,  
arbitrator

(6) The arbitrator shall determine his or her own procedure but shall permit the parties to present evidence and make submissions.

Powers

(7) The fact-finder and the arbitrator each has power,

- (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as he or she considers requisite to the full investigation and consideration of the matters referred to him or her in the same manner as a court of record in civil cases;
- (b) to administer oaths and affirmations;
- (c) to accept such oral or written evidence as he or she considers proper, whether or not admissible in a court of law;
- (d) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the matters referred to him or her, and inspect and view any work, material, machinery, appliance or article therein, and to ask employees questions;
- (e) to authorize any person to do anything that he or she may do under clause (d) and to report to him or her thereon.

Remuneration  
and expenses

(8) The arbitrator and the fact-finder shall be paid such remuneration and expenses as the Lieutenant Governor in Council may decide.

Fact-finding

**5.—(1)** The fact-finder shall conduct a comprehensive investigation of all matters relevant to the staffing dispute, including the use of part-time workers, between the employer and Local 113, Amalgamated Transit Union and the fact-finder shall make a report together with any recommendations thereon to the parties and to the Minister of Labour.

Scope of  
investigation

(2) Within thirty days after his or her appointment, the fact-finder and the parties shall attempt to define which issues related to the staffing dispute, including the use of part-time workers, are to be investigated by the fact-finder, failing which the fact-finder, within fourteen additional days or within such longer period as the Minister of Labour may permit, shall decide the issues to be investigated.



(3) The decision of the fact-finder under subsection (2) is final and binding on the employer, the Local and the arbitrator.

Decision

(4) The fact-finder shall notify the Minister of Labour of any agreement under subsection (2) and the fact-finder shall notify the Minister, the employer and the Local of a decision under that subsection.

Notice

(5) The fact-finder may attempt to mediate a settlement of the issues under investigation at any time during the investigation.

Mediation

(6) Subject to subsection (7), the fact-finder shall submit his or her report and recommendations, if any, to the Minister, the employer and the Local by the 30th day of June, 1990, or such later date as the Minister may permit.

Time-limit

(7) The fact-finder shall terminate the investigation and shall not be required to make a report if the employer and the Local agree on a settlement of the issues under investigation.

End of investigation

(8) If the fact-finder issues a report, the employer and the Local shall bargain in good faith and make every reasonable effort to settle the unresolved issues in the staffing dispute, including the use of part-time workers.

Attempt to settle

(9) An agreement between the employer and the Local on any issue that is or was the subject of the fact-finder's investigation or report shall be deemed to be part of the collective agreement between the employer and the Local expiring on the 30th day of June, 1991.

Effect of agreement

(10) Section 89 of the *Labour Relations Act* applies with necessary modifications to the enforcement of subsection (8).

Application of R.S.O. 1980, c. 228, s. 89

(11) In addition to the issues that are the subject of the investigation, the fact-finder, as part of the investigation and report, may consider any other matter related to or contained in any collective agreement between the employer and the Local that he or she considers relevant to the settlement of the issues under investigation and may make recommendations thereon.

Additional matters

**6.—**(1) Subject to subsection (2), the arbitrator shall determine all matters remaining in dispute between the employer and the unions immediately before the coming into force of this Act, including any matter that may be a subject of dispute as to agreement thereon and any other matters that

Arbitration

appear to the arbitrator to be necessary to be decided in order to conclude collective agreements between the parties.

Exception

(2) The arbitrator, in his or her role as arbitrator, shall not deal with any issue in dispute between the employer and Local 113, Amalgamated Transit Union, related to staffing, including the use of part-time workers, that is the subject of the fact-finder's investigation as agreed or decided under subsection 5 (2).

Agreement  
of parties  
incorporated

(3) If the parties reach agreement on any terms or conditions before the rendering of an award by the arbitrator and the arbitrator is informed in writing, the award of the arbitrator shall be confined to those issues which remain in dispute and to those matters which, in the opinion of the arbitrator, must be decided in order to conclude collective agreements between the parties.

Time-limit

(4) The arbitrator shall make an award within sixty days after the day the notice is given to the Minister under subsection 5 (4), or within such further period of time as the Minister may permit.

Arbitrator  
remains  
seized

(5) The arbitrator remains seized of and may deal with all matters within his or her jurisdiction until collective agreements between the parties are in effect.

Terms of  
agreements

(6) The collective agreements between the parties shall be for periods in each case commencing on the day immediately following the expiry date and expiring on the second anniversary of the expiry date.

Award final  
and binding

(7) The award of the arbitrator is final and binding upon the parties and the employees.

Execution of  
agreement

(8) Within seven days after the date of the award of the arbitrator, or such longer period as may be agreed upon in writing by the parties, the parties shall prepare and execute documents giving effect to the award, and the documents thereupon constitute collective agreements.

Preparation  
of agreement  
by arbitrator

(9) If the parties fail to prepare and execute documents in the form of collective agreements giving effect to the award of the arbitrator within the period mentioned in subsection (8), they shall notify the arbitrator in writing forthwith, and the arbitrator shall prepare documents in the form of collective agreements giving effect to his or her award and submit the document to the parties for execution.

(10) If the parties or any of them fail to execute the documents prepared by the arbitrator within a period of seven days from the day the arbitrator submits the documents to them, the documents shall come into effect as though they had been executed by the parties and the documents thereupon constitute collective agreements. Failure to execute agreement

7.—(1) The basic hourly rates of wages for the employees are hereby increased by 5 per cent over the basic hourly wage rates in effect on the expiry date, retroactive to the day immediately following the expiry date, and the award of the arbitrator shall include such increase. Wage increase

(2) Nothing in this section prevents the parties from agreeing or the arbitrator from granting increases in the basic wage rates in excess of those established by this section. Idem

8.—(1) The *Arbitrations Act* does not apply to arbitration proceedings under this Act. R.S.O. 1980, c. 25  
not to apply

(2) Part I of the *Statutory Powers Procedure Act* does not apply to arbitration proceedings or to any decision-making process or investigation of the fact-finder under this Act. Idem  
R.S.O. 1980, c. 484

9. Sections 92, 93, 94, 95, 97, 98, 99 and 100 of the *Labour Relations Act* apply to the parties and to the employees with necessary modifications. Application of  
R.S.O. 1980, c. 228

10.—(1) A person or union who contravenes any provision of this Act is guilty of an offence and on conviction is liable, Offence and penalties

(a) if an individual, to a fine of not more than \$1,000; or

(b) if the employer or a union, to a fine of not more than \$10,000.

(2) Each day that a person or the union contravenes any provision of this Act constitutes a separate offence. Continuing offences

(3) No prosecution for an offence under this Act shall be instituted except with the written consent of the Minister of Labour. Consent to prosecute

(4) Section 101 of the *Labour Relations Act* does not apply to a prosecution for an offence under this Act. R.S.O. 1980, c. 228, s. 101  
not to apply

(5) In a prosecution for an offence under this Act, a copy of a consent purporting to have been signed by the Minister of Evidence of consent



Labour is sufficient evidence of the Minister's consent without proof of the signature.

Costs

**11.** The employer and the union shall assume their own costs of the proceedings under this Act, and the remuneration and expenses of the arbitrator and the fact-finder shall be paid out of the Consolidated Revenue Fund.

Commence-  
ment

**12.**—(1) This Act comes into force when it receives Royal Assent.

Repeal

(2) This Act is repealed on the 31st day of March, 1991.

Short title

**13.** The short title of this Act is the *Toronto Transit Commission Labour Disputes Settlement Act, 1989*.

## CHAPTER 53

### An Act to amend the Power Corporation Act

*Assented to October 16th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 1 of the *Power Corporation Act*, being chapter 384 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 16, section 1, is repealed and the following substituted therefor:**

**1.—(1)** In this Act, unless the contrary intention appears, Definitions

“Board” means the board of directors of the Corporation;

“buildings” includes all buildings, structures and works that the Corporation may deem necessary for the purposes of this Act;

“chairperson” means the chairperson of the Board;

“Corporation” means the body corporate referred to in section 2;

“director” means a member of the Board;

“energy conservation program” means an energy conservation program under section 56a;

“heat energy” means energy that is conveyed in the medium of steam, hot water or hot air and that is produced for sale;

“land” means real property and includes tenements, hereditaments and appurtenances, and any estate, term, easement, right or interest in, to, over, under or affecting land;

“Minister” means the Minister of Energy;

“municipal corporation” means the corporation of a locality the inhabitants of which are incorporated and includes the

corporation of a metropolitan, regional or district municipality and The Corporation of the County of Oxford;

“owner” includes a mortgagee, lessee, tenant, occupant and any other person entitled to a limited estate or interest in land and a guardian, committee, executor, administrator or trustee in whom land is vested;

“power” means electrical power and includes electrical energy;

“prescribed” means prescribed by the regulations made under this Act;

“president” means the president of the Corporation;

“supply” includes delivery, dealing in, and sale;

“Treasurer of Ontario” means the Treasurer of Ontario and Minister of Economics;

“works” includes all roads, plant, machinery, buildings, erections, constructions, installations, materials, devices, fittings, apparatus, appliances, equipment and other property for the development, generation, transformation, transmission, conveying, distribution, supply or use of power.

Powers,  
duties to be  
exercised  
from time to  
time

(2) If a power is conferred or a duty is imposed on the Corporation or the Board, the power may be exercised and the duty shall be performed from time to time as occasion requires.

**2.—(1) Subsection 3 (1) of the said Act is repealed and the following substituted therefor:**

Composition  
of Board

(1) There shall be a board of directors of the Corporation consisting of a chairperson, a vice-chairperson, a president and not more than fourteen other directors.

**(2) Section 3 of the said Act is amended by adding thereto the following subsection:**

Idem

(2a) The chairperson shall carry out the duties that are assigned to the chairperson by the Board.

**(3) Subsection 3 (3) of the said Act is amended by striking out “two” in the fourth line.**



**(4) Section 3 of the said Act is further amended by adding thereto the following subsection:**

(5a) The president shall be the chief executive officer of the Corporation. Chief executive officer

**3. Subsection 4 (2) of the said Act is repealed and the following substituted therefor:**

(2) Meetings of the Board shall be held at the call of the chairperson. Meetings of Board

(2a) The chairperson shall call at least one meeting of the Board in each calendar month and shall not allow more than six weeks to elapse between meetings of the Board. Frequency of meetings

**4.—(1) Subsection 5 (2) of the said Act is repealed and the following substituted therefor:**

(2) The Board may appoint a finance committee consisting of the chairperson, the vice-chairperson, the president and at least three other directors. Finance committee

**(2) Section 5 of the said Act is amended by adding thereto the following subsections:**

(4) The Board may delegate its powers under clause 17 (c) and sections 19, 51 and 55 and any prescribed powers to the finance committee. Delegation of powers

(5) The Board may appoint other committees and may delegate to other committees any of its powers other than those described in subsection (4). Other committees

(6) The Board may impose any restrictions on a delegation under subsection (4) or (5). Restrictions

(7) If all the directors present at or participating in the meeting consent, a meeting of directors or of a committee of directors may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed to be present at that meeting. Meetings by telephone, etc.

(8) A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or a committee of directors, is as valid as if it had been passed at a meeting of directors or a committee of directors. Resolutions in writing

Copy to be kept

(9) A copy of every resolution passed under subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

**5. Subsection 6 (1) of the said Act is repealed.**

**6. Subsection 7 (5) of the said Act is repealed and the following substituted therefor:**

Indemnification of directors, etc.  
1982, c. 4

(5) Section 136 of the *Business Corporations Act, 1982* applies with necessary modifications to the Corporation as if it were a corporation incorporated under that Act.

Idem

(5a) Section 136 of that Act applies in respect of employees, former employees and their heirs and legal representatives in the same manner that it applies in respect of officers, former officers and their heirs and legal representatives.

**7. Section 9 of the said Act is amended by adding thereto the following subsection:**

Other reports

(2) The Corporation shall make such further reports and provide such further information to the Minister or the Treasurer of Ontario as required from time to time.

**8. The said Act is amended by adding thereto the following sections:**

Policy statements

**9a.**—(1) The Minister may from time to time issue policy statements that have been approved by the Lieutenant Governor in Council on matters relating to the Corporation's exercise of its powers and duties under this Act.

Corporation to respect policy statements

(2) In exercising a power or duty under this Act, the Corporation shall respect any policy statement that relates to its exercise.

Board to ensure exercise conforms to statement

(3) In exercising a power or duty under this Act, the Board shall use its best efforts to ensure that such exercise broadly conforms to any policy statement that relates to its exercise, and shall report to the Minister whenever it does exercise a power or duty that relates to a policy statement.

Memorandum of understanding

**9b.**—(1) Within six months after the coming into force of this section and at least once in every three years thereafter, the Corporation and the Minister shall enter into a memorandum of understanding.

Contents of memorandum

(2) The memorandum of understanding shall clearly set out,

- (a) the Corporation's accountability to the Minister;
- (b) the Corporation's reporting requirements to the Minister and to such other persons as are specified in the memorandum;
- (c) matters of government policy that the Corporation shall respect in the conduct of its affairs;
- (d) any other prescribed matter;
- (e) any other matter agreed to by the Corporation and the Minister.

(3) The Corporation shall comply with the memorandum of understanding in exercising its powers and duties under this Act. Corporation to comply

**9c.**—(1) The Corporation shall submit to the Minister any plans that the Minister may from time to time require. Submission of plans

(2) A plan submitted under subsection (1) shall be in the form and for the period required by the Minister. Form and content of plans

**9d.**—(1) The Minister, with the approval of the Lieutenant Governor in Council, may by order appoint one or more persons to conduct an inquiry concerning any matter to which this Act applies that is specified in the order. Commission of inquiry

(2) The persons appointed under subsection (1) have the powers of a commission under Part II of the *Public Inquiries Act*. Powers of persons conducting inquiry  
R.S.O. 1980, c. 411

(3) The persons appointed under subsection (1) shall report the results of the inquiry to the Minister. Report

**9. Section 12 of the said Act is amended by adding thereto the following subsection:**

(2) Subsection (1) does not apply to the Pension and Insurance Fund of Ontario Hydro. Exception

**10. Subsection 15 (1) of the said Act is amended by adding thereto the following clause:**

- (c) the net proceeds resulting from related business ventures carried on by any of the Corporation's subsidiaries.



**11. Subsection 19 (1) of the said Act is amended by adding thereto the following paragraph:**

6. The prescribed securities, financial contract agreements and investments.

**12.—(1) Subsection 20 (1) of the said Act is amended by striking out “regulations” in the sixth line and inserting in lieu thereof “rules”.**

**(2) Subsection 20 (3) of the said Act is amended by striking out “prescribed by the regulations” in the second and third lines and inserting in lieu thereof “provided for by the rules”.**

**(3) Clause 20 (5) (a) of the said Act is amended by striking out “regulations” in the fourth line and inserting in lieu thereof “rules”.**

**(4) Subsection 20 (7) of the said Act is repealed and the following substituted therefor:**

Other  
pension plans

(7) The Corporation may establish other pension plans in addition to the Ontario Hydro Pension and Insurance Plan.

Rules

(7a) The Corporation may make rules with respect to its pension plans, including rules,

- (a) setting out the class or classes of employees who are eligible to be members of a plan, the time at which membership shall commence and the period of time thereafter within which an employee may elect not to be a member of a plan;
- (b) providing for the payment out of the fund of the contributions made by any employee to the fund or to either of the funds superseded by the fund where the employee elects not to be a member of a plan;
- (c) setting out the period of employment with the Corporation alone, or with a previous or subsequent employer and the Corporation, that constitutes service for the purpose of determining pension benefits;
- (d) providing for the transfer from or to the fund of a pension entitlement and setting out the terms and conditions upon which pension benefits under a plan in respect of employment with a previous employer may be provided by the transfer to the fund of such a pension entitlement;

- (e) setting out the persons who may receive benefits under a plan;
- (f) setting out the contributions to the fund by employees and the rate or rates at which interest shall be calculated when payments are made out of the fund of any such contributions and of any contributions to either of the funds superseded by the fund;
- (g) setting out the amount for which any employee or pensioner shall be insured from time to time;
- (h) setting out the payments to be made from the fund or by an insurer, upon,
  - (i) termination of employment,
  - (ii) retirement from employment on pension,
  - (iii) disability, or
  - (iv) death,and the terms and conditions upon which, and the person or persons to whom, such payments shall be made;
- (i) providing for payment out of the fund of the cost of any benefits provided under any agreement referred to in subsection (5);
- (j) setting out the intervals of time within which an actuarial valuation of the fund shall be made;
- (k) respecting any matter necessary or advisable to carry out effectively the intent and purposes of this section.

**13. The said Act is further amended by adding thereto the following section:**

**21a.—**(1) The Corporation, with the approval of the Lieutenant Governor in Council, may make regulations, Regulations

- (a) prescribing additional powers that may be delegated to the finance committee;
- (b) prescribing investments for the purposes of paragraph 6 of subsection 19 (1).

Idem

(2) The Lieutenant Governor in Council may make regulations prescribing other matters to be set out in a memorandum of understanding under section 9b.

Idem

(3) Notwithstanding anything to the contrary in the trade agreement entered into between the governments of Canada and the United States of America on the 2nd day of January, 1988 or any law of Canada implementing the agreement, the Lieutenant Governor in Council may by regulation,

- (a) authorize the Corporation to participate in one or more government programs relating to economic development and named in the regulation; and
- (b) prescribe the region or regions to which that authority extends, the manner in which that authority shall be exercised and the conditions to which that authority is subject.

**14. Section 34 of the said Act is repealed and the following substituted therefor:**

Compensation for damage

**34.—**(1) Where a power exercised under section 23 or 32 does not constitute an expropriation or injurious affection, compensation shall be paid to the owner for all damage to property resulting from the exercise of the power.

Application of  
R.S.O. 1980,  
c. 148

(2) The *Expropriations Act* applies with necessary modifications to the exercise of a power under subsection (1) as if it constituted injurious affection.

Limitation

(3) Where the lines or works of the Corporation are situate upon the King's Highway or any other highway, compensation for felling or removing trees or branches of trees is payable under subsection (1) only to the extent to which it is payable by a municipality under section 313 of the *Municipal Act*.

R.S.O. 1980,  
c. 302

**15. Subsection 35 (2) of the said Act is repealed and the following substituted therefor:**

Effect of failure to give notice

(2) Where a claimant fails to give or gives insufficient notice of a claim within the period required by subsection (1), either the Corporation or the owner may request the board of negotiation under the *Expropriations Act* to attend and investigate the damage complained of.

R.S.O. 1980,  
c. 148

Idem

(3) The board of negotiation may award such compensation as appears to it to be just if it is satisfied that,



- (a) there was reasonable excuse for the failure to give or the insufficiency of the notice; and
- (b) the Corporation was not thereby prejudiced.

(4) A finding of the board of negotiation under subsection (3) is final and binding upon the owner and the Corporation. Idem

**16.** The said Act is further amended by adding thereto the following section:

**37a.**—(1) The Corporation may purchase the residential premises owned and occupied by an employee or officer of the Corporation if employment by the Corporation obliges the employee or officer to reside in a new location. Homes of transferred employees

(2) The Corporation may sell or lease residential premises acquired under subsection (1). Idem

(3) Notwithstanding section 46, a residential premises purchased by the Corporation under this section is liable to assessment and taxation as if it were owned by any other person. Premises subject to municipal taxation

**17.** Subsection 40 (10) of the said Act is amended by striking out “or of the Divisional Court, such order is final” in the ninth line and inserting in lieu thereof “to be benefitted by such works or improvements”.

**18.** Section 42 of the said Act is repealed and the following substituted therefor:

**42.**—(1) In this section, “right” means any right, interest, way, privilege, permit or easement. Definition

(2) Notwithstanding any other Act, where any right has heretofore been or is hereafter acquired by the Corporation, in, through, over, under, along, upon, across or affecting any land, unless it is otherwise agreed, the land continues subject to the right for the term thereof and it is binding upon the owner at the time of acquisition and all subsequent owners of the land until expiration or release by the Corporation. Continuance of right

(3) Where a right mentioned in subsection (1) has heretofore been or is hereafter assigned by the Corporation to a municipal corporation or a commission established or deemed to be established under Part III of the *Public Utilities Act*, unless it is otherwise agreed, the land continues subject to the right for the term of the assignment and the right continues to Transfer of easements, etc. to commission  
R.S.O. 1980, c. 423

bind all owners of the land until expiration or release by the municipal corporation or commission.

## Information

(4) The Corporation, a municipal corporation or a commission mentioned in subsection (3), upon the request of a person intending to acquire an estate or interest in any land, shall make a search of its records and inform the person as to whether or not it has a right that relates to the land that is not registered under the *Land Titles Act* or the *Registry Act*.

R.S.O. 1980,  
cc. 230, 445

## Idem

(5) Where the Corporation, municipal corporation or commission informs the person that it has a right mentioned in subsection (4), it shall also inform the person as to the term and extent of the right.

## Time

(6) The Corporation, municipal corporation or commission shall provide the information mentioned in subsections (4) and (5) not later than twenty-one days after the date on which it receives the request for the information.

## Compensation

(7) A person who suffers loss or damage due to the failure of the Corporation, municipal corporation or commission to comply with subsections (4) to (6) is entitled to compensation for the loss or damage from the Corporation, municipal corporation or commission, as the case may be.

Application  
of  
R.S.O. 1980,  
c. 148

(8) The *Expropriations Act* applies with necessary modifications to a claim for compensation under subsection (7) as if it constituted injurious affection and, for the purpose,

- (a) a reference to the statutory authority shall be deemed to be a reference to the Corporation, municipal corporation or the commission, as the case requires; and
- (b) a reference to the owner shall be deemed to be a reference to the person mentioned in subsection (4).

Application  
of subss.(4-8)

(9) Subsections (4) to (8) do not apply where works of the Corporation, municipal corporation or commission are visible on the land that is subject to the right.

**19.** Subsection 44 (1) of the said Act is amended by striking out “not less than \$5 and not more than \$10” in the fifth and sixth lines and inserting in lieu thereof “not more than \$200”.

**20.—**(1) Subsections 51 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) In this section, "securities" means notes, discount notes, bonds, debentures and other securities. Definition

(1a) Subject to the approval of the Lieutenant Governor in Council, the Corporation may, General borrowing powers

- (a) borrow from time to time such sums of money as it may consider requisite for any of its purposes;
- (b) for the purpose of such borrowing, issue securities bearing no interest or bearing interest at such rate or rates as the Corporation may determine at the time of issue;
- (c) determine the time or times, the manner, the place or places in Canada or elsewhere and the currency of such country or countries in which the principal, interest if any and premium if any are payable; and
- (d) determine at the time of their issue the time or times, the price or prices and the manner, either with or without premium, that such securities are redeemable in advance of maturity.

(2) The Corporation, without any further approval of the Lieutenant Governor in Council, may from time to time authorize the issue of securities if, Idem

- (a) it has by resolution passed and approved under subsection (1a) authorized the borrowing of money by the issue from time to time of securities maturing not later than five years from the respective dates of issue and bearing interest, if any, at a rate or rates not exceeding the maximum rate of interest specified in the resolution;
- (b) the securities are within the maximum principal amount prescribed by the resolution;
- (c) the securities bear such respective dates of issue and mature not later than five years from those dates; and
- (d) the securities bear interest, if any, at such respective rates not exceeding the said maximum interest if any.

(2) Clause 51 (3) (b) of the said Act is amended by inserting after "notes" in the first line "discount notes".



(3) Clause 51 (3) (d) of the said Act is amended by inserting after “notes” in the second line “discount notes”.

(4) Subsection 51 (5) of the said Act is amended by inserting after “notes” in the second line “discount notes”.

(5) Subsection 51 (7) of the said Act is amended by inserting after “notes” in the third line “discount notes”.

(6) Subsection 51 (8) of the said Act is amended by inserting after “notes” in the first line “discount notes”.

**21.—**(1) Subsection 53 (1) of the said Act is repealed and the following substituted therefor:

Guaranteeing  
bonds of  
Corporation

(1) The Lieutenant Governor in Council is authorized, on such terms as are approved by order in council, to guarantee the payment of the principal, interest and premium of any notes, discount notes, bonds, debentures or other securities issued by the Corporation.

Form and  
manner

(1a) Any such guarantee shall be in the form and manner approved by the Lieutenant Governor in Council.

Signing

(1b) A guarantee shall be signed by the Treasurer of Ontario or the Deputy Treasurer of Ontario or such other officer or officers as are designated by the Lieutenant Governor in Council.

After  
signature,  
Province is  
liable

(1c) After a guarantee is so signed, the Province of Ontario becomes liable for the payment of the principal, interest and premium of the notes, discount notes, bonds, debentures or other securities as provided in the guarantee.

Payment  
authorized

(1d) The Lieutenant Governor in Council is authorized to make arrangements for supplying the money necessary to fulfil the requirements of a guarantee and to advance the money necessary for that purpose out of the Consolidated Revenue Fund.

Conclusive  
evidence

(1e) Any guarantee signed in accordance with subsection (1b) is conclusive evidence of the guarantee.

(2) Subsection 53 (2) of the said Act is amended by inserting after “notes” in the ninth line and in the thirteenth line “discount notes”.

**22.** Subsection 55 (2) of the said Act is amended by inserting after “notes” in the second line “discount notes”.

**23. Section 56 of the said Act is amended by adding thereto the following subsections:**

(2) Clauses 23 (1) (c), (f), (o), (p) and (v) and sections 279, 280, 281 and 282 of the *Corporations Act* apply with necessary modifications to the Corporation in carrying out its purposes and business.

Incidental  
powers  
R.S.O. 1980,  
c. 95

(3) Subject to the approval of the Lieutenant Governor in Council, the Corporation may exercise the powers set out in clauses 23 (1) (a), (b), (d), (e) and (h) of the *Corporations Act* in carrying out its purposes and business.

Idem

**24. Subsection 56a (3) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 16, section 3, is amended by adding thereto the following paragraphs:**

5. The reduction of electrical energy use through more efficient use of electricity.
6. The shifting of electrical loads from times of high demand to times of lower demand.

**25.—(1) Subsection 56b (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 16, section 3, is amended by inserting after “money” in the second line “and provide such incentives and technical assistance”.**

(2) Subsection 56b (2) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 16, section 3, is amended by inserting after “loan” in the first line “or incentive or assistance”.

(3) Subsection 56b (3) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 16, section 3, is amended by inserting after “money” in the first line “or provide incentives or assistance”.

**26. The said Act is further amended by adding thereto the following section:**

**56h.—(1)** In this section, “parallel generation” means the generation of power from equipment that is neither owned nor operated by the Corporation and that is directly or indirectly connected to a power distribution or transmission system of the Corporation.

Definition

(2) The purposes and business of the Corporation include the encouragement of parallel generation.

Parallel  
generation

Loans, etc.,  
for parallel  
generation

(3) The Corporation may loan such money and provide such incentives and technical assistance as the Corporation determines appropriate for the encouragement of parallel generation.

Terms and  
conditions

(4) A loan or incentive or assistance under this section may be made upon such terms and conditions, including terms and conditions in respect of certification of work, security, repayment, costs of recovery and interest, as the Corporation determines.

**27. Subsection 57 (1) of the said Act is repealed and the following substituted therefor:**

Corporation  
may  
purchase,  
lease, sell  
supplies

(1) The Corporation may purchase or lease such electrical, hydraulic or other machinery, appliances, apparatus and furnishings as may be used in the transmission, distribution, supply or use of power and may sell or dispose of any such thing that it owns.

**28. The said Act is further amended by adding thereto the following section:**

Definition

**59a.**—(1) In this section, “related business venture” means a business venture to assist the Corporation in carrying out its purposes, a business venture through which the Corporation can market its products or expertise or any other business venture related to the matters it is authorized to carry on under sections 23, 56, 56d, 56g and 57.

Related  
business  
ventures

(2) Subject to the approval of the Lieutenant Governor in Council, the Corporation may,

- (a) carry on related business ventures within and outside Ontario; and
- (b) for the purpose may acquire by purchase or otherwise shares or stock in a corporation or the securities of a corporation or may incorporate a corporation to carry on such ventures.

Restriction

(3) A corporation whose shares, stock or securities are acquired under subsection (2) or that is incorporated under subsection (2) shall not carry on an activity for which the Corporation is required to obtain the approval of the Lieutenant Governor in Council without obtaining the approval of the Lieutenant Governor in Council.



**29.—(1)** Section 62 of the said Act is amended by striking out “not in excess of 9 per cent per annum” in the fifth and sixth lines.

**(2)** The said section 62 is further amended by adding thereto the following subsection:

**(2)** The rate of interest under subsection (1) shall not exceed a rate equal to the average borrowing rate for funds borrowed in Canadian dollars by the Corporation for a term not exceeding one year in the quarter preceding the date the payment went into arrears. Rate of interest

**30.** Section 69 of the said Act is amended by adding thereto the following subsections:

**(1a)** The Corporation may exercise the discretion under subsection (1) in respect of a proposed contract for supplying power outside Canada only if, Restriction

**(a)** that supply of power is surplus to the reasonably foreseeable power requirements of Ontario and other customers in Canada; and

**(b)** the price to be charged for that supply of power will recover the appropriate share of the costs incurred in Ontario and be more than the price charged to customers in Canada for equivalent service.

**(1b)** The Board shall ensure that the requirements for power of Ontario customers and any requirements for power under contracts with other customers in Canada are met before meeting the requirements for power of any customer outside Canada. Idem

**(1c)** Subsections (1a) and (1b) apply notwithstanding anything to the contrary in the trade agreement entered into between the governments of Canada and the United States of America on the 2nd day of January, 1988 or any law of Canada implementing the agreement. Idem

**31.—(1)** Section 78 of the said Act is amended by striking out “interest at the rate of 4 per cent per year” in the seventh and eighth lines and inserting in lieu thereof “on an annual basis interest calculated under subsection (2)”.

**(2)** The said section 78 is further amended by adding thereto the following subsection:

Calculation  
of interest

(2) Interest under subsection (1) shall be calculated by determining the average borrowing rate for funds borrowed in Canadian dollars by the Corporation for a term not exceeding one year in the quarter preceding the beginning of the year for which the interest is calculated.

**32. Section 90 of the said Act is amended by adding thereto the following subsections:**

Reasonable  
security

(2) The Corporation may require any customer in the rural power district to give reasonable security for the payment of its rates and charges,

- (a) before supplying power to the customer;
- (b) as a condition of continuing such supply; or
- (c) before performing any work or providing any service for the purpose of such supply.

Power to  
shut off  
supply

(3) In default of payment, the Corporation may shut off the supply of power but the rates or charges in default are, nevertheless, recoverable.

**33.—(1) Subsection 92 (1) of the said Act is amended by inserting after “which” in the eighth line “a committee of”.**

**(2) Section 92 of the said Act is amended by adding thereto the following subsection:**

Committee

(1a) The committee shall consist of the chairperson and at least two other directors appointed by the chairperson.

(3) Subsection 92 (2) of the said Act is amended by striking out “Board” in the first line and inserting in lieu thereof “committee”.

**(4) The said section 92 is further amended by adding thereto the following subsection:**

Decision of  
Board

(3) A decision of the committee shall be deemed to be a decision of the Board.

**34.—(1) Subsection 93 (1) of the said Act is amended by adding thereto the following clauses:**

- (e) adopting by reference, in whole or in part, with such changes as the Corporation with the approval of the Lieutenant Governor in Council considers necessary, any code or standard and requiring

compliance with any code or standard that is so adopted;

- (f) requiring compliance with any code or standard under a rule or by-law of a municipal corporation or commission or under a rule of a person supplying power to such works.

**(2) Subsection 93 (11) of the said Act is repealed and the following substituted therefor:**

**(11) Every municipal or other corporation or commission, and every company, firm or individual,** Offences

- (a) hindering, molesting, disturbing or interfering with an inspector or other employee in the performance of the inspector's or employee's duty under this section is guilty of an offence and on conviction is liable to a fine of not more than \$500 for each offence;
- (b) refusing or neglecting to comply with this section, or with any regulation, plan or specification made under its authority is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for each offence;
- (c) refusing or neglecting to comply with an order issued by the Corporation under subsection (5) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 and a further fine of not more than \$500 for each day upon which such refusal or neglect is repeated or continued.

**35. Subsection 95 (2) of the said Act is amended by striking out "having a population of less than 200,000" in the fifth and sixth lines.**

**36. The said Act is further amended by striking out "chairman" wherever it appears and inserting in lieu thereof in each instance "chairperson" and by striking out "vice-chairman" wherever it appears and inserting in lieu thereof in each instance "vice-chairperson".**

**37. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.** Commence-  
ment

**38. The short title of this Act is the *Power Corporation Amendment Act, 1989 (No. 2)*.** Short title





## CHAPTER 54

### An Act to amend the Highway Traffic Act

*Assented to October 16th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—**(1) Subsection 1 (1) of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 48, section 1 and 1983, chapter 63, section 1, is further amended by renumbering paragraph 1 as paragraph 1a and by adding thereto the following paragraph:

1. “bicycle” includes a tricycle and unicycle but does not include a motor assisted bicycle.

**(2)** Paragraph 17 of the said subsection 1 (1) is repealed and the following substituted therefor:

17. “median strip” means the portion of a highway so constructed as to separate traffic travelling in one direction from traffic travelling in the opposite direction by a physical barrier or a raised or depressed paved or unpaved separation area that is not intended to allow crossing vehicular movement.

**(3)** Paragraph 39 of the said subsection 1 (1), as amended by the Statutes of Ontario, 1983, chapter 63, section 1, is further amended by inserting after “machine” in the second line “bicycle”.

**2.** Subsection 5 (2) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 21, section 1, is amended by inserting after “fee” in the first line “or tax”.

**3.** The said Act is amended by renumbering section 17a, as enacted by the Statutes of Ontario, 1984, chapter 21, section 2, as section 17f and by adding thereto the following Part:

## PART II-A

## PARKING PERMITS

Issuance of  
disabled  
person  
parking  
permits

**17a.**—(1) The Minister shall issue a disabled person parking permit to every person or organization that applies therefor and meets the requirements of the regulations.

Term

(2) A disabled person parking permit is in force during the period of time shown on the permit.

Cancellation  
of permit

(3) The Minister may cancel a disabled person parking permit or may refuse to issue a replacement permit if the permit has been used in contravention of this Part or the regulations or of a municipal by-law passed under paragraph 119 or 150 of section 210 of the *Municipal Act*.

R.S.O. 1980,  
c. 302

Refusal to  
issue new  
permit

(4) If the Minister cancels a disabled person parking permit, the Minister may refuse to issue a new permit to the holder of the cancelled permit.

Offence

**17b.** No person shall,

- (a) have in his or her possession a disabled person parking permit that is fictitious, altered or fraudulently obtained;
- (b) display a disabled person parking permit otherwise than in accordance with the regulations;
- (c) fail or refuse to surrender a disabled person parking permit in accordance with this Part or the regulations; or
- (d) use a disabled person parking permit on land owned and occupied by the Crown otherwise than in accordance with the regulations.

Reasonable  
inspection

**17c.**—(1) Every person having possession of a disabled person parking permit shall, upon the demand of a police officer, police cadet, municipal law enforcement officer or an officer appointed for carrying out the provisions of this Act, surrender the permit for reasonable inspection to ensure that the provisions of this Part and the regulations and any municipal by-law passed under paragraph 119 or 150 of section 210 of the *Municipal Act* are being complied with.

R.S.O. 1980,  
c. 302

Officer may  
take  
possession of  
the permit

(2) An officer or cadet to whom a disabled person parking permit has been surrendered may retain it until disposition of



the case if the officer or cadet has reasonable ground to believe that the permit,

- (a) was not issued under this Part;
- (b) was obtained under false pretences;
- (c) has been defaced or altered;
- (d) has expired or been cancelled; or
- (e) is being or has been used in contravention of the regulations or of a by-law passed under paragraph 119 or 150 of section 210 of the *Municipal Act*.

R.S.O. 1980,  
c. 302

**17d.** The following items, if valid immediately before this Part comes into force, shall be deemed to be a disabled person parking permit until the earlier of their expiry date, if not for this Part, and the day that is six months after this Part comes into force:

Number  
plates and  
permits  
issued before  
this Part  
comes into  
force

1. A number plate bearing the symbol for the disabled issued under this Act and displayed in accordance with the regulations as they exist immediately before this Part comes into force.
2. A permit issued by a municipality under paragraph 119 of section 210 of the *Municipal Act* as it exists immediately before this Part comes into force.

**17e.** The Lieutenant Governor in Council may make regulations,

Regulations

- (a) prescribing any form for the purposes of this Part and requiring its use;
- (b) respecting the issuance, renewal, cancellation, replacement and disposal of disabled person parking permits;
- (c) prescribing the requirements for obtaining a disabled person parking permit;
- (d) prescribing the period of time or the method of determining the period of time during which disabled person parking permits shall be in force;
- (e) governing the manner of displaying disabled person parking permits on or in vehicles;

- (f) requiring the erection of signs and the placing of markings to identify designated parking spaces for the use of vehicles displaying a disabled person parking permit, and prescribing the types, content and location of such signs and markings;
- (g) prescribing the conditions of use of a disabled person parking permit on land owned and occupied by the Crown;
- (h) requiring and governing the surrender of disabled person parking permits;
- (i) providing for and governing the recognition of permits, number plates and other markers and devices issued by other jurisdictions as being equivalent to disabled person parking permits issued under this Part.

**4. Subsection 18 (2a) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 13, section 2, is amended by inserting after “licences” in the second line “or provides any other service in relation to licences”.**

**5.—(1) Subclause 18 (5) (a) (i) of the said Act is amended by inserting after “conditions” in the second line “or endorsements”.**

**(2) Subclause 18 (5) (b) (i) of the said Act is amended by inserting after “conditions” in the first line “or endorsements”.**

**6. Subsection 21 (1) of the said Act is repealed and the following substituted therefor:**

Displaying  
licence that  
has been  
suspended,  
altered, etc.

- (1) No person shall,
  - (a) display or cause or permit to be displayed or have in his or her possession a fictitious, altered or fraudulently obtained driver's licence;
  - (b) display or cause or permit to be displayed or have in his or her possession a cancelled, revoked or suspended driver's licence other than a Photo Card portion thereof;
  - (c) lend his or her driver's licence or any portion thereof or permit the use of it by another person;

- (d) display or represent as his or her own a driver's licence not issued to him or her;
- (e) apply for, secure or retain in his or her possession more than one driver's licence; or
- (f) fail to surrender to the Ministry upon its demand a driver's licence that has been suspended, revoked or cancelled.

(1a) In subsection (1), "licence" includes any portion thereof. Idem

(1b) Any police officer who has reason to believe that any person has in his or her possession a driver's licence or portion thereof referred to in subsection (1) may take possession of the licence or portion thereof and, where the officer does so, shall forward it to the Registrar upon disposition of the case. Seizing licence

**7.—(1)** Subsection 26 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 61, section 1, is amended by striking out "clauses (1) (b) and (c)" in the third line and inserting in lieu thereof "clauses (1) (f) and (g)".

(2) Subsection 26 (2a) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 61, section 1, is amended by striking out "Clauses (1) (b) and (c)" in the first line and inserting in lieu thereof "Clauses (1) (f) and (g)".

**8.** Clause 43 (b) of the said Act is amended by adding at the end thereof "and a vehicle designated in writing by the Fire Marshal of Ontario as a "fire department vehicle" "".

**9.—(1)** Section 46 of the said Act, as amended by the Statutes of Ontario, 1985, chapter 13, section 9, is further amended by adding thereto the following subsections:

(2a) No person shall ride a bicycle on a highway unless it is equipped with at least one brake system acting on the rear wheel that will enable the rider to make the braked wheel skid on dry, level and clean pavement. Brakes on bicycle

(2b) In subsection (2a), "bicycle" has its ordinary meaning and does not include a unicycle or tricycle. Meaning of bicycle

(2) Clause 46 (4) (a) of the said Act is amended by inserting after "(2)" in the third line "(2a)".



**(3) Subsection 46 (4) of the said Act is amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding thereto the following clause:**

- (c) exempting any person or class of persons or any class of bicycles from subsection (2a) and prescribing conditions for any such exemption.

**10. Subsection 57 (5) of the said Act is amended by striking out “bicycle and tricycle” in the first and second lines and inserting in lieu thereof “and bicycle”.**

**11. Section 84 of the said Act is amended by adding thereto the following subsection:**

Adoption by  
reference

(2) Any regulation made under clause (1) (b) may adopt by reference any code, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary and may require compliance with any code that is adopted.

**12. Section 90 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 28, section 3, is further amended by adding thereto the following subsection:**

Idem

(6a) No person shall drive a motor vehicle on a highway in which there is a child passenger weighing less than twenty-three kilograms who does not occupy, if available, a seating position for which a seat belt assembly is provided.

**13. Clause 92 (1) (b) of the said Act is repealed and the following substituted therefor:**

- (b) road service vehicles as defined in Part IX and includes such vehicles while they are travelling to and from a maintenance site or repair centre.

**14. Clause 109 (12) (a) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 21, section 8, is further amended by striking out “a motor vehicle of a municipal fire department” in the first line and inserting in lieu thereof “a fire department vehicle as defined in section 43”.**

**15. Section 113 of the said Act is amended by adding thereto the following subsection:**

Exception

(2) Subsection (1) does not apply to a road service vehicle as defined in Part IX.

**16.** Section 113a of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 21, section 9, is amended by adding thereto the following clause:

- (aa) "road service vehicle" means a vehicle operated by or on behalf of a municipality or other authority having jurisdiction and control of a highway while the vehicle is being used for highway maintenance purposes.

**17.** Subsection 114 (4) of the said Act is amended by striking out "vehicle or road-building machine while it is being used for maintenance of the highway" in the first, second and third lines and inserting in lieu thereof "road service vehicle".

**18.** Section 120 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 21, section 14, is further amended by adding thereto the following subsection:

- (6) No person shall ride a bicycle across a roadway within a pedestrian crosswalk.

Riding in  
pedestrian  
crosswalks  
prohibited

**19.** Section 121 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 21, section 15, is further amended by adding thereto the following subsections:

- (3a) A driver of a road service vehicle entering an intersection within a lane other than one described in subsection (2) or (3) may make a right turn from the approach lane if the turn can be safely made.

Exception

- (6a) A driver of a road service vehicle entering an intersection within a left-turn lane may leave the intersection without turning to the left if the movement can be safely made.

Exception

**20.** Section 122 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 63, section 27 and 1984, chapter 61, section 5, is further amended by adding thereto the following subsection:

- (4a) Notwithstanding clause (4) (b), a person on a bicycle may indicate the intention to turn to the right by extending the right hand and arm horizontally and beyond the right side of the bicycle.

Idem

**21.** Section 124 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 21, section 16, is amended by adding thereto the following subsection:

## Exception

(9a) Notwithstanding subsection (9), a driver of a road service vehicle in a left-turn lane may proceed through the intersection without turning to the left if the movement can be safely made, there is showing a circular green or green arrow indication for the through traffic movement, and the driver,

- (a) where the applicable left-turn traffic control signal is showing a circular red indication, first brings the vehicle to a stop; and
- (b) where the operation of any other vehicle may be affected, indicates his or her intention to proceed through the intersection without turning to the left by giving a plainly visible signal to the driver or operator of the other vehicle.

**22. Section 124 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 21, section 16, is amended by adding thereto the following subsection:**

Riding in  
crosswalks  
prohibited

(26a) No person shall ride a bicycle across a roadway within or along a crosswalk at an intersection or at a location other than an intersection which location is controlled by a traffic control signal system.

**23. Section 126 of the said Act is repealed and the following substituted therefor:**

Slow vehicles  
to travel on  
right side

**126.—(1)** Any vehicle travelling upon a roadway at less than the normal speed of traffic at that time and place shall, where practicable, be driven in the right-hand lane then available for traffic or as close as practicable to the right hand curb or edge of the roadway.

## Exception

(2) Subsection (1) does not apply to a driver of a,

- (a) vehicle while overtaking and passing another vehicle proceeding in the same direction;
- (b) vehicle while preparing for a left turn at an intersection or into a private road or driveway; or
- (c) road service vehicle.

**24. Subsections 127 (1), (2), (3), (4) and (5) of the said Act are repealed and the following substituted therefor:**

Passing  
meeting  
vehicles

(1) Every person in charge of a vehicle on a highway meeting another vehicle shall turn out to the right from the centre



of the roadway, allowing the other vehicle one-half of the roadway free.

(2) Every person in charge of a vehicle or on horseback on a highway who is overtaken by a vehicle or equestrian travelling at a greater speed shall turn out to the right and allow the overtaking vehicle or equestrian to pass.

Vehicles or  
equestrians  
overtaken

(2a) Subsections (1) and (2) do not apply to a person in charge of a road service vehicle or a road-building machine or apparatus while the machine or apparatus is engaged in the construction of a highway.

Exception

(3) Every person in charge of a vehicle on a highway meeting a person travelling on a bicycle shall allow the cyclist sufficient room on the roadway to pass.

Vehicles  
meeting  
bicycles

(4) Every person in charge of a vehicle or on horseback on a highway who is overtaking another vehicle or equestrian shall turn out to the left so far as may be necessary to avoid a collision with the vehicle or equestrian overtaken, and the person overtaken is not required to leave more than one-half of the roadway free.

Vehicles or  
equestrians  
overtaking  
others

(5) Every person on a bicycle or motor assisted bicycle who is overtaken by a vehicle or equestrian travelling at a greater speed shall turn out to the right and allow the vehicle or equestrian to pass and the vehicle or equestrian overtaking shall turn out to the left so far as may be necessary to avoid a collision.

Bicycles  
overtaken

**25. Section 128 of the said Act is repealed and the following substituted therefor:**

**128.—**(1) No vehicle shall be driven or operated to the left of the centre of a roadway designed for one or more lines of traffic in each direction,

Driving to  
left of centre  
prohibited  
under certain  
conditions

(a) when approaching the crest of a grade or upon a curve in the roadway or within 30 metres of a bridge, viaduct or tunnel where the driver's view is obstructed within that distance so as to create a potential hazard in the event another vehicle might approach from the opposite direction; or

(b) when approaching within 30 metres of a level railway crossing.

(2) Subsection (1) does not apply,

Exception

- (a) on a highway divided into clearly marked lanes where there are more such lanes for traffic in one direction than in the other direction;
- (b) to a road service vehicle where precautions are taken to eliminate the hazard; or
- (c) on a highway while it is designated for the use of one-way traffic.

**26. Subsection 129 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 48, section 17, is amended by striking out “or” at the end of clause (c), by adding “or” at the end of clause (d) and by adding thereto the following clause:**

- (e) a road service vehicle.

**27.—(1) Clause 133 (c) of the said Act is repealed and the following substituted therefor:**

- (c) any lane may be designated for slowly moving traffic, traffic moving in a particular direction or classes or types of vehicles and, notwithstanding section 121, where a highway is so designated and official signs indicating the designation are erected, every driver shall obey the instructions on the official signs.

**(2) Section 133 of the said Act is amended by adding thereto the following subsection:**

Exception

(2) Where safety is not jeopardized, clauses (1) (b) and (c) do not apply to road service vehicles and clause (1) (c) does not apply to road-building machines or apparatus while engaged in the construction of a highway.

**28. Section 135 of the said Act is amended by adding thereto the following subsection:**

Idem

(2) Notwithstanding clause (1) (a), a road service vehicle may be operated or driven along the shoulder of the highway if the vehicle remains on its side of the separation.

**29. Subsection 135a (2) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 48, section 18, is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding thereto the following clause:**

- (d) the driver of a road service vehicle, if the movement is made in safety.

**30.—(1)** Subsection 144 (1) of the said Act is amended by striking out “or tricycle” in the second line.

(2) Subsection 144 (2) of the said Act is amended by striking out “or tricycle” in the first and second lines.

**31.** Section 147 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 63, section 33, 1985, chapter 13, section 13 and 1989, chapter 17, section 35, is further amended by adding thereto the following subsection:

(2b) Subsection (1) does not apply to a road service vehicle Exception  
that is parked, standing or stopped safely.

**32.** The said Act is further amended by adding thereto the following section:

**147a.—(1)** No person shall make or convey an offer of Tow truck services  
services of a tow truck while that person is within 200 metres of,

- (a) the scene of an accident or apparent accident; or
- (b) a vehicle involved in an accident,

on the King's Highway.

(2) No person shall park or stop a tow truck on the King's Idem  
Highway within 200 metres of,

- (a) the scene of an accident or apparent accident; or
- (b) a vehicle involved in an accident,

if there is a sufficient number of tow trucks already at the scene to deal with all vehicles that apparently require the services of a tow truck.

(3) Subsections (1) and (2) do not apply to a person who is Idem  
at the scene of the accident at the request of a police officer, an officer appointed for carrying out the provisions of this Act, a person engaged in highway maintenance or a person involved in the accident.

(4) Every person who contravenes any provision in this section is guilty of an offence and on conviction is liable, Offence



- (a) for a first offence, to a fine of not less than \$200 and not more than \$1,000; and
- (b) for each subsequent offence, to a fine of not less than \$400 and not more than \$2,000, or to imprisonment for a term of not more than six months, or to both.

Idem

(5) An offence under this section committed five years or longer after a previous conviction for an offence under this section is not a subsequent offence for the purposes of clause (4) (b).

**33.** Section 151 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 21, section 19 and amended by 1984, chapter 61, section 6, is repealed and the following substituted therefor:

Definitions

**151.—(1)** In this section,

“children” means,

- (a) persons under the age of eighteen, and
- (b) in the case where a school bus is being operated by or under a contract with a school board or other authority in charge of a school for the transportation of children to or from school, includes students of the school;

“developmental handicap” means a condition of mental impairment, present or occurring during a person’s formative years, that is associated with limitations in adaptive behaviour;

“school” does not include a post-secondary school educational institution;

“school bus” means a bus that,

- (a) is painted chrome yellow, and
- (b) displays on the front and rear thereof the words “school bus” and on the rear thereof the words “do not pass when signals flashing”.

Idem

(2) For the purposes of subsection (3), a motor vehicle shall be deemed to be a bus if it is or has been operated under the authority of a permit for which a bus registration or validation fee was paid in any jurisdiction.

(3) No bus, except a bus that at any time during its current validation period is used to transport children or to transport adults who have developmental handicaps, shall be painted chrome yellow. Prohibition

(4) No motor vehicle on a highway, other than a school bus, shall have displayed thereon the words "school bus" or the words "do not pass when signals flashing" or be equipped with a school bus stop arm. Idem

(5) No person shall drive or operate a motor vehicle on a highway that contravenes subsection (3) or (4). Idem

(6) Subject to subsection (9), every school bus driver,

Duty of  
driver to use  
signals

(a) who is about to stop on a highway for the purpose of receiving or discharging children or receiving or discharging adults who have developmental handicaps, shall actuate the overhead red signal-lights on the bus;

(b) as soon as the bus is stopped for a purpose set out in clause (a), shall actuate the school bus stop arm; and

(c) while the bus is stopped for a purpose set out in clause (a) on a highway that does not have a median strip, shall continue to operate the overhead red signal-lights and stop arm until all passengers having to cross the highway have completed the crossing.

(7) Clause 147 (1) (a) does not apply to a driver who stops in accordance with subsection (6). Exception to  
cl.  
147 (1) (a)

(8) No person shall actuate the overhead red signal-lights or the stop arm on a school bus on a highway under any circumstances other than those set out in subsection (6). Restriction  
on use of  
signals

(9) No person shall actuate the overhead red signal-lights or the stop arm on a school bus, Idem

(a) at an intersection controlled by an operating traffic control signal system;

(b) at any other location controlled by an operating traffic control signal system at,

(i) a sign or roadway marking indicating where the stop is to be made,

(ii) the area immediately before entering the nearest crosswalk, if there is no sign or marking indicating where the stop is to be made, or

(iii) a point not less than five metres before the nearest traffic control signal, if there is no sign, marking or crosswalk; or

(c) within sixty metres from a location referred to in clause (a) or (b).

Bus loading zone

(10) No person shall stop a school bus on a highway for the purpose of receiving or discharging children or receiving or discharging adults who have developmental handicaps,

(a) opposite a designated school bus loading zone; or

(b) at a designated school bus loading zone, except as close as practicable to the right curb or edge of the roadway.

Duty of drivers when school bus stopped

(11) Every driver or street car operator, when meeting on a highway, other than a highway with a median strip, a stopped school bus that has its overhead red signal-lights flashing, shall stop before reaching the bus and shall not proceed until the bus moves or the overhead red signal-lights have stopped flashing.

Idem

(12) Every driver or street car operator on a highway, when approaching from the rear a stopped school bus that has its overhead red signal-lights flashing, shall stop at least twenty metres before reaching the bus and shall not proceed until the bus moves or the overhead red signal-lights have stopped flashing.

Designating bus loading zones

(13) A council of a municipality may by by-law designate school bus loading zones, in accordance with the regulations, on highways under its jurisdiction and, where it does so, subsection (6) does not apply to a driver about to stop or stopping in a zone so designated.

When effective

(14) No by-law passed under subsection (13) becomes effective until the highways or portions thereof affected have signs erected in compliance with this Act and the regulations.

Regulations

(15) The Lieutenant Governor in Council may make regulations,



- (a) respecting the operation of vehicles used for transporting children or for transporting adults who have developmental handicaps;
- (b) prescribing the type, design and colour of vehicles referred to in clause (a) and the markings to be displayed thereon;
- (c) requiring the use of any equipment on or in vehicles referred to in clause (a) and prescribing the standards and specifications of such equipment;
- (d) prescribing the qualifications of drivers of vehicles referred to in clause (a) and prohibiting the operation thereof by unqualified persons;
- (e) requiring the inspection of vehicles referred to in clause (a);
- (f) respecting the designation of school bus loading zones, the location thereof, the erection of signs and the placing of markings on highways;
- (g) prescribing the books and records that shall be kept by persons who operate vehicles used for transporting children or for transporting adults who have developmental handicaps;
- (h) requiring the retention of prescribed books and records within vehicles and prescribing the information to be contained and the entries to be recorded in the books or records.

(16) Any regulation made under subsection (15) may be general or particular in its application. Scope of regulations

(17) Every person who contravenes subsection (11) or (12) is guilty of an offence and on conviction is liable, Penalty

- (a) for a first offence, to a fine of not less than \$100 and not more than \$500; and
- (b) for each subsequent offence, to a fine of not less than \$250 and not more than \$1,000 or to imprisonment for a term of not more than six months, or to both.

(18) An offence referred to in subsection (17) committed more than five years after a previous conviction for either of Time limit for subsequent offence

the offences referred to in subsection (17) is not a subsequent offence for the purpose of clause (17) (b).

**34.** Section 155 of the said Act is amended by adding thereto the following subsection:

Idem

(2) Subsection (1) does not apply to a pedestrian walking a bicycle in circumstances where crossing to the left side of the highway would be unsafe.

**35.** Subsection 158 (1) of the said Act is amended by adding at the end thereof “and prohibiting the use or erection of any sign or type of sign that is not prescribed”.

**36.** Subsection 169 (1) of the said Act is amended by inserting after “Act” in the ninth line “or the regulations” and by adding at the end thereof “upon the inconsistency arising”.

**37.—(1)** Subsection 181 (3) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 15, section 12, is amended by inserting after “Act” in the first line “or any municipal by-law regulating or prohibiting parking, standing or stopping”.

(2) Subsection 181 (4) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 63, section 43, is amended by inserting after “Act” in the first line “or any municipal by-law regulating or prohibiting parking, standing or stopping”.

**38.** Section 184 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 61, section 7 and 1985, chapter 13, section 14, is further amended by adding thereto the following subsection:

Report on  
disabled  
person  
parking  
by-law  
conviction  
R.S.O. 1980,  
c. 302

(1c) Notwithstanding subsection (1), a judge, provincial judge or justice of the peace who makes a conviction under a municipal by-law passed under paragraph 119 or 150 of section 210 of the *Municipal Act* for the improper use of a disabled person parking permit issued under section 17a or the clerk of the court in which the conviction is made shall forthwith certify the conviction to the Registrar setting out the name and address of the person convicted, the number of the disabled person parking permit used in the offence, the name and address of the person or organization in whose name the disabled person parking permit is issued, the date the offence was committed and the provision of the by-law contravened.

**39.** Section 185 of the said Act is amended by adding thereto the following subsection:

(4) Where a licence consists of a Photo Card and a Licence Card, subsections (2) and (3) do not apply to the Photo Card portion thereof. Exception

**40. Section 186 of the said Act is amended by adding thereto the following subsection:**

(3) Where a licence consists of a Photo Card and a Licence Card, subsections (1) and (2) do not apply to the Photo Card portion thereof. Exception

**41. The said Act is further amended by adding thereto the following section:**

**190a.**—(1) A police officer who finds any person contravening any provision under this Act while in charge of a bicycle may require that person to stop and to provide identification of himself or herself. Cyclist to identify self

(2) Every person who is required to stop, by a police officer acting under subsection (1), shall stop and identify himself or herself to the police officer. Idem

(3) For the purposes of this section, giving one's correct name and address is sufficient identification. Idem

(4) A police officer may arrest without warrant any person who does not comply with subsection (2). Idem

**42. The said Act is further amended by adding thereto the following section:**

**192a.**—(1) A police officer or an officer appointed for carrying out the provisions of this Act who discovers a vehicle apparently abandoned on or near a highway or a motor vehicle or trailer without proper number plates may take the vehicle into the custody of the law and may cause it to be taken to and stored in a suitable place. Abandoned or unplatd vehicles

(2) All costs and charges for removal, care or storage of a vehicle taken or stored under subsection (1) are a lien upon the vehicle that may be enforced in the manner provided by Part III of the *Repair and Storage Liens Act, 1989*. Costs for storage  
1989, c. 17

#### COMPLEMENTARY AMENDMENTS

**43.**—(1) Paragraph 119 of section 210 of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 41, section 1, is repealed and the following substituted therefor:



Parking for  
disabled  
persons  
R.S.O. 1980,  
c. 198

119. For exempting the owners and drivers of vehicles displaying a disabled person parking permit issued under and displayed in accordance with the *Highway Traffic Act* and the regulations made thereunder from any provision of a by-law passed by the council under this Act or under any other general or special Act for prohibiting or regulating the parking, standing or stopping of vehicles on any highway or part thereof under the jurisdiction of the council.

(a) A by-law passed under this paragraph,

(i) may regulate or prohibit the parking, standing or stopping of vehicles displaying a disabled person parking permit, and the provisions authorized by this subclause may be different from and in conflict with the provisions of any other by-law of the municipality for prohibiting or regulating the parking, standing or stopping of vehicles on a highway or part thereof under the jurisdiction of the council,

(ii) shall prescribe the conditions of use of a disabled person parking permit, and shall prohibit the improper use thereof, and

(iii) may provide for the removal or impounding of any vehicle, at its owner's expense, parked or left contrary to the by-law.

**(2) Paragraph 150 of the said section 210 is repealed and the following substituted therefor:**

Parking  
facilities for  
disabled  
persons

150. For requiring the owners or operators of parking lots or other parking facilities to which the public has access, whether on payment of a fee or otherwise, to provide designated parking spaces for the sole use of vehicles displaying a disabled person parking permit issued under and displayed in accordance with the *Highway Traffic Act* and the regulations made thereunder and for prohibiting the use of such spaces by other vehicles.

R.S.O. 1980,  
c. 198

(a) A by-law passed under this paragraph,

(i) may specify the dimensions of parking spaces to be provided for the sole use of vehicles displaying a disabled person parking permit, and the number of such spaces to be provided by each owner or operator of a parking lot or other parking facility, which number may be based upon a proportion of the total number

of parking spaces in the parking lot or parking facility to which the public has access,

- (ii) shall prescribe the conditions of use of a disabled person parking permit, and shall prohibit the improper use thereof, and
- (iii) may provide for the removal or impounding of any vehicle, at its owner's expense, parked or left contrary to the by-law.

**44.—(1)** This Act, except sections 3, 9, 18, 22, 32, 33, 37, 38, 41 and 43, comes into force on the day it receives Royal Assent. Commence-  
ment

(2) Sections 3, 9, 18, 22, 32, 33, 37, 38, 41 and 43 come into force on a day to be named by proclamation of the Lieutenant Governor. Idem

**45.** The short title of this Act is the *Highway Traffic Amendment Act, 1989*. Short title





## CHAPTER 55

**An Act to amend the Courts of Justice Act, 1984**

*Assented to November 15th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 1 of the *Courts of Justice Act, 1984*, being chapter 11, is repealed and the following substituted therefor:**

**1. In this Act,**

Definitions

“action” means a civil proceeding that is not an application and includes a proceeding commenced by,

- (a) claim,
- (b) statement of claim,
- (c) notice of action,
- (d) counterclaim,
- (e) crossclaim,
- (f) third or subsequent party claim, or
- (g) divorce petition or counterpetition;

“application” means a civil proceeding that is commenced by notice of application or by application;

“defendant” means a person against whom an action is commenced;

“hearing” includes a trial;

“motion” means a motion in a proceeding or an intended proceeding;

“order” includes a judgment or decree;

“plaintiff” means a person who commences an action;

“region” means a region prescribed under section 92a. 1984, c. 11, s. 1, *amended*.

**2.** Parts I and II, Part III, as amended by the Statutes of Ontario, 1984, chapter 55, section 213, 1984, chapter 64, section 1, 1985, chapter 1, section 4, 1986, chapter 7, section 15 and 1987, chapter 1, sections 1, 2 and 3, Part IV, as amended by the Statutes of Ontario, 1984, chapter 55, section 213, 1984, chapter 64, sections 2, 3, 4 and 5, 1987, chapter 1, sections 4, 5 and 6 and 1989, chapter 46, section 24 and Part V, as amended by the Statutes of Ontario, 1984, chapter 64, sections 6 and 7, of the said Act are repealed and the following substituted therefor:

## PART I

### COURT OF APPEAL FOR ONTARIO

Court of  
Appeal

**2.—(1)** The branch of the Supreme Court of Ontario named the Court of Appeal for Ontario is continued as a superior court of record named the Court of Appeal for Ontario.

Idem

(2) In exercising its jurisdiction, the Court of Appeal has all the power and authority historically exercised by courts of common law and equity in England and Ontario. 1984, c. 11, s. 2, *amended*.

Composition  
of court

**3.—(1)** The Court of Appeal shall consist of,

- (a) the Chief Justice of Ontario, who shall be president of the court;
- (b) the Associate Chief Justice of Ontario; and
- (c) such number of other judges as is fixed under subsection (2), to be called justices of appeal. 1984, c. 11, s. 3 (1), *amended*.

Number of  
judges

(2) The Lieutenant Governor in Council may by regulation fix the number of judges of the Court of Appeal who are in addition to the Chief Justice and the Associate Chief Justice.

Idem

(3) A reduction in the number of judges does not affect appointments existing at the time of the reduction. *New*.

Additional  
judges

(4) There shall be such additional offices of judge of the Court of Appeal as are from time to time required, to be held

by Chief Justices of Ontario and Associate Chief Justices of Ontario who have elected under the *Judges Act* (Canada) to perform only the duties of a judge of the Court of Appeal. 1984, c. 11, s. 6 (1), *amended*. R.S.C. 1985, c. J-1

(5) There shall be such additional offices of supernumerary judge of the Court of Appeal as are from time to time required, to be held by judges of the Court of Appeal who have elected under the *Judges Act* (Canada) to hold office only as a supernumerary judge of the court. 1984, c. 11, s. 6 (3), *amended*. Super-numerary judges

4.—(1) The Chief Justice of Ontario, with the concurrence of the Chief Justice of the Ontario Court, may assign a judge of the Ontario Court (General Division) to perform the work of a judge of the Court of Appeal. 1984, c. 11, s. 9 (2), *amended*. Assignment of judges from General Division

(2) A judge of the General Division is, by virtue of his or her office, a judge of the Court of Appeal and has all the jurisdiction, power and authority of a judge of the Court of Appeal. 1984, c. 11, s. 8, *amended*. General Division judges

5.—(1) The Chief Justice of Ontario has general supervision and direction over the sittings of the Court of Appeal and the assignment of the judicial duties of the court. 1984, c. 11, s. 18 (5). Powers and duties of Chief Justice

(2) If the Chief Justice of Ontario is absent from Ontario or is for any reason unable to act, his or her powers and duties shall be exercised and performed by the Associate Chief Justice of Ontario. Absence of Chief Justice

(3) If the Chief Justice of Ontario and the Associate Chief Justice of Ontario are both absent from Ontario or for any reason unable to act, the powers and duties of the Chief Justice shall be exercised and performed by a judge of the Court of Appeal designated by the Chief Justice or Associate Chief Justice. 1984, c. 11, s. 3 (2), *amended*. Absence of Associate Chief Justice

6.—(1) An appeal lies to the Court of Appeal from, Court of Appeal jurisdiction

- (a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave as provided in the rules of court;
- (b) a final order of a judge of the Ontario Court (General Division), except an order referred to in clause 18 (1) (a);



- (c) a certificate of assessment of costs issued in a proceeding in the Court of Appeal, on an issue in respect of which an objection was served under the rules of court. 1984, c. 11, s. 17 (1), *amended*.

Combining of  
appeals from  
other courts

(2) The Court of Appeal has jurisdiction to hear and determine an appeal that lies to the Divisional Court or the Ontario Court (General Division) if an appeal in the same proceeding lies to and is taken to the Court of Appeal.

Idem

(3) The Court of Appeal may, on motion, transfer an appeal that has already been commenced in the Divisional Court or the Ontario Court (General Division) to the Court of Appeal for the purpose of subsection (2). 1984, c. 11, s. 17 (2), *amended*.

Composition  
of court for  
hearings

7.—(1) A proceeding in the Court of Appeal shall be heard and determined by not fewer than three judges sitting together, and always by an uneven number of judges. 1984, c. 11, s. 18 (1), *amended*.

Idem,  
motions

(2) A motion in the Court of Appeal and an appeal under clause 6 (1) (c) shall be heard and determined by one judge.

Idem

(3) Subsection (2) does not apply to a motion for leave to appeal, a motion to quash an appeal or any other motion that is specified by the rules of court.

Idem

(4) A judge assigned to hear and determine a motion may adjourn the motion to a panel of the Court of Appeal.

Idem

(5) A panel of the Court of Appeal may, on motion, set aside or vary the decision of a judge who hears and determines a motion. 1984, c. 11, s. 18 (3), *amended*.

References to  
Court of  
Appeal

8.—(1) The Lieutenant Governor in Council may refer any question to the Court of Appeal for hearing and consideration.

Opinion of  
court

(2) The court shall certify its opinion to the Lieutenant Governor in Council, accompanied by a statement of the reasons for it, and any judge who differs from the opinion may certify his or her opinion and reasons in the same manner.

Submissions  
by Attorney  
General

(3) On the hearing of the question, the Attorney General of Ontario is entitled to make submissions to the court.

Idem

(4) The Attorney General of Canada shall be notified and is entitled to make submissions to the court if the question relates to the constitutional validity or constitutional applica-

bility of an Act, or of a regulation or by-law made under an Act, of the Parliament of Canada or the Legislature.

(5) The court may direct that any person interested, or any one or more persons as representatives of a class of persons interested, be notified of the hearing and be entitled to make submissions to the court. Notice

(6) If an interest affected is not represented by counsel, the court may request counsel to argue on behalf of the interest and the reasonable expenses of counsel shall be paid by the Treasurer of Ontario. Appointment of counsel

(7) The opinion of the court shall be deemed to be a judgment of the court and an appeal lies from it as from a judgment in an action. 1984, c. 11, s. 19. Appeal

## PART II

### ONTARIO COURT OF JUSTICE

**9.—**(1) The Ontario Court of Justice is established. Ontario Court

(2) The Ontario Court shall consist of two divisions, the General Division and the Provincial Division. *New.* Divisions

### ONTARIO COURT (GENERAL DIVISION)

**10.—**(1) The branch of the Supreme Court of Ontario named the High Court of Justice for Ontario is continued as a superior court of record named the Ontario Court (General Division). General Division

(2) The General Division has all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario. 1984, c. 11, s. 2 (1), *amended.* Idem

**11.—**(1) The General Division shall consist of, Composition of General Division

- (a) the Chief Justice of the Ontario Court, who shall be president of the Ontario Court;
- (b) a regional senior judge of the General Division for each region;
- (c) a senior judge of the General Division for the Unified Family Court; and

- (d) such number of judges of the General Division as is fixed under clause 52 (1) (a). 1984, c. 11, s. 4 (1), *amended*.

Additional  
judges

(2) There shall be such additional offices of judge of the General Division as are from time to time required, to be held by Chief Justices of the Ontario Court and regional senior judges of the General Division who have elected under the *Judges Act* (Canada) to perform only the duties of a judge of the Ontario Court. 1984, c. 11, s. 6 (1), *amended*.

R.S.C. 1985,  
c. J-1

Super-  
numerary  
judges

(3) There shall be such additional offices of supernumerary judge of the General Division as are from time to time required, to be held by judges of the General Division who have elected under the *Judges Act* (Canada) to hold office only as a supernumerary judge of that division. 1984, c. 11, s. 6 (3), *amended*.

Assignment  
of judges  
from Court  
of Appeal

**12.**—(1) The Chief Justice of Ontario, with the concurrence of the Chief Justice of the Ontario Court, may assign a judge of the Court of Appeal to perform the work of a judge of the General Division. 1984, c. 11, s. 9 (1), *amended*.

Court of  
Appeal  
judges

(2) A judge of the Court of Appeal is, by virtue of his or her office, a judge of the General Division and has all the jurisdiction, power and authority of a judge of the General Division. 1984, c. 11, s. 8, *amended*.

Powers and  
duties of  
Chief Justice  
of Ontario  
Court

**13.**—(1) The Chief Justice of the Ontario Court shall direct and supervise the sittings of the Ontario Court (General Division) and the assignment of its judicial duties.

Regional  
senior  
judges,  
General  
Division

(2) A regional senior judge of the General Division shall, subject to the authority of the Chief Justice of the Ontario Court, exercise the powers and perform the duties of the Chief Justice in respect of the General Division in his or her region.

Delegation

(3) A regional senior judge of the General Division may delegate to a judge of the General Division in his or her region the authority to exercise specified functions. *New*.

Absence of  
Chief Justice  
of Ontario  
Court

(4) If the Chief Justice of the Ontario Court is absent from Ontario or is for any reason unable to act, his or her powers and duties shall be exercised and performed by a regional senior judge of the General Division designated by the Chief Justice of the Ontario Court. 1984, c. 11, s. 4 (3), *amended*.

Absence of  
regional  
senior judge  
of General  
Division

(5) The powers and duties of a regional senior judge of the General Division who is absent from Ontario or is for any rea-



son unable to act shall be exercised and performed by a judge of the General Division designated by the Chief Justice of the Ontario Court.

(6) The Chief Justice of the Ontario Court may hold meetings with the regional senior judges of the General Division in order to consider any matters concerning sittings of the General Division and the assignment of its judicial duties. *New.* Meetings with regional senior judges

**14.—**(1) The Chief Justice of the Ontario Court shall assign every judge of the General Division to a region and may re-assign a judge from one region to another. Judges assigned to regions

(2) There shall be at least one judge of the General Division assigned to each county and district. At least one judge in each county

(3) No judge of the General Division who was a judge of the High Court of Justice or the District Court of Ontario before this section comes into force shall be assigned without his or her consent to a region other than the region in which he or she resided immediately before this section comes into force. High Court and District Court judges

(4) Subsections (1) to (3) do not prevent the temporary assignment of a judge to a location anywhere in Ontario. *New.* Idem

**15.** A proceeding in the General Division shall be heard and determined by one judge of the General Division. 1984, c. 11, s. 14 (1), *amended.* Composition of court for hearings

**16.** An appeal lies to the General Division from, Appeals to General Division

(a) an interlocutory order of a master;

(b) a certificate of assessment of costs issued in a proceeding in the General Division, on an issue in respect of which an objection was served under the rules of court. 1984, c. 11, s. 13 (2), *amended.*

#### DIVISIONAL COURT

**17.—**(1) There shall be a branch of the General Division to be known as the Divisional Court consisting of the Chief Justice of the Ontario Court who shall be president of the court and such other judges of the General Division as the Chief Justice designates from time to time. Divisional Court

(2) Every judge of the General Division is also a judge of the Divisional Court. 1984, c. 11, s. 5, *amended.* Jurisdiction of judges

Divisional  
Court  
jurisdiction

**18.—(1)** An appeal lies to the Divisional Court from,

- (a) a final order of a judge of the General Division,
  - (i) for a single payment of not more than \$25,000, exclusive of costs,
  - (ii) for periodic payments that amount to not more than \$25,000, exclusive of costs, in the twelve months commencing on the date the first payment is due under the order,
  - (iii) dismissing a claim for an amount that is not more than the amount set out in subclause (i) or (ii), or
  - (iv) dismissing a claim for an amount that is more than the amount set out in subclause (i) or (ii) and in respect of which the judge indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in subclause (i) or (ii);
- (b) an interlocutory order of a judge of the General Division, with leave as provided in the rules of court;
- (c) a final order of a master. 1984, c. 11, s. 15 (1), *amended*.

Combining of  
appeals from  
General  
Division

(2) The Divisional Court has jurisdiction to hear and determine an appeal that lies to the General Division if an appeal in the same proceeding lies to and is taken to the Divisional Court.

Idem

(3) The Divisional Court may, on motion, transfer an appeal that has already been commenced in the General Division to the Divisional Court for the purpose of subsection (2). 1984, c. 11, s. 15 (2), *amended*.

Appeal from  
interlocutory  
orders

(4) No appeal lies from an interlocutory order of a judge of the General Division made on an appeal from an interlocutory order of the Provincial Division. 1984, c. 11, s. 36 (4), *amended*.

Appeals  
heard in  
regions

**19.—(1)** An appeal to the Divisional Court shall be heard in the region in which the order appealed from was made, unless the parties agree otherwise.

(2) Any other proceeding in the Divisional Court may be brought in any region. *New.* Other proceedings in any region

**20.**—(1) A proceeding in the Divisional Court shall be heard and determined by three judges sitting together. Composition of court for hearings

(2) A proceeding in the Divisional Court may be heard and determined by one judge where the proceeding, Idem

(a) is an appeal under clause 18 (1) (c);

(b) is an appeal under section 30 from a provincial judge or a deputy judge presiding over the Small Claims Court; or

(c) is in a matter that the Chief Justice of the Ontario Court or a judge designated by the Chief Justice is satisfied, from the nature of the issues involved and the necessity for expedition, can and ought to be heard and determined by one judge.

(3) A motion in the Divisional Court shall be heard and determined by one judge, unless otherwise provided by the rules of court. Idem, motions

(4) A judge assigned to hear and determine a motion may adjourn it to a panel of the Divisional Court. Idem

(5) A panel of the Divisional Court may, on motion, set aside or vary the decision of a judge who hears and determines a motion. 1984, c. 11, s. 16, *amended.* Idem

#### SMALL CLAIMS COURT

**21.**—(1) There shall be a branch of the General Division to be known as the Small Claims Court consisting of the Chief Justice of the Ontario Court who shall be president of the court and such other judges of the General Division as the Chief Justice designates from time to time. Small Claims Court

(2) Every judge of the General Division is also a judge of the Small Claims Court. *New.* Jurisdiction of judges

**22.**—(1) The Small Claims Court, Jurisdiction

(a) has jurisdiction in any action for the payment of money where the amount claimed does not exceed the prescribed amount exclusive of interest and costs; and



- (b) has jurisdiction in any action for the recovery of possession of personal property where the value of the property does not exceed the prescribed amount. 1984, c. 11, s. 78 (1), *amended*.

Transfer  
from General  
Division

(2) An action in the General Division may be transferred to the Small Claims Court by the local registrar of the General Division on requisition with the consent of all parties filed before the trial commences if,

- (a) the only claim is for the payment of money or the recovery of possession of personal property; and
- (b) the claim is within the jurisdiction of the Small Claims Court.

Idem

(3) An action transferred to the Small Claims Court shall be titled and continued as if it had been commenced in that court. 1984, c. 11, s. 84, *amended*.

Composition  
of court for  
hearings

**23.**—(1) A proceeding in the Small Claims Court shall be heard and determined by one judge of the General Division.

Provincial  
judge or  
deputy judge  
may preside

(2) A proceeding in the Small Claims Court may also be heard and determined by,

- (a) a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before this section comes into force; or
- (b) a deputy judge appointed under section 31.

Where  
deputy judge  
not to  
preside

(3) A deputy judge shall not hear and determine an action,

- (a) for the payment of money in excess of the prescribed amount; or
- (b) for the recovery of possession of personal property exceeding the prescribed amount in value. *New*.

Summary  
hearings

**24.** The Small Claims Court shall hear and determine in a summary way all questions of law and fact and may make such order as is considered just and agreeable to good conscience. 1984, c. 11, s. 78 (3), *amended*.

Representation

**25.** A party may be represented in a proceeding in the Small Claims Court by counsel or an agent but the court may exclude from a hearing anyone, other than a barrister and solicitor qualified to practise in Ontario, appearing as an agent on behalf of a party if it finds that such person is not compe-

tent properly to represent the party or does not understand and comply at the hearing with the duties and responsibilities of an advocate. 1984, c. 11, s. 79, *amended*.

**26.**—(1) Subject to subsections (3) and (4), the Small Claims Court may admit as evidence at a hearing and act upon any oral testimony and any document or other thing so long as the evidence is relevant to the subject-matter of the proceeding, but the court may exclude anything unduly repetitious. Evidence

(2) Subsection (1) applies whether or not the evidence is given or proven under oath or affirmation or admissible as evidence in any other court. Idem

(3) Nothing is admissible in evidence at a hearing, Idem

(a) that would be inadmissible by reason of any privilege under the law of evidence; or

(b) that is inadmissible by any Act.

(4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding. Conflicts

(5) A copy of a document or any other thing may be admitted as evidence at a hearing if the presiding judge is satisfied as to its authenticity. 1984, c. 11, s. 80, *amended*. Copies

**27.** The Small Claims Court may order the times and the proportions in which money payable under an order of the court shall be paid. 1984, c. 11, s. 81, *amended*. Instalment orders

**28.** An award of costs in the Small Claims Court, other than disbursements, shall not exceed 15 per cent of the amount claimed or the value of the property sought to be recovered unless the court considers it necessary in the interests of justice to penalize a party, counsel or agent for unreasonable behaviour in the proceeding. *New*. Limit on costs

**29.** Orders of the Small Claims Court shall be directed to a bailiff appointed under subsection 32 (1) for enforcement, unless otherwise provided by the rules of court. 1984, c. 11, s. 82, *amended*. Enforcement of orders

**30.** An appeal lies to the Divisional Court from a final order of the Small Claims Court in an action, Appeals

- (a) for the payment of money in excess of \$500, excluding costs; or
- (b) for the recovery of possession of personal property exceeding \$500 in value. 1984, c. 11, s. 83, *amended*.

Deputy  
judges

**31.**—(1) A regional senior judge of the General Division may, with the approval of the Attorney General, appoint a barrister and solicitor to act as a deputy judge of the Small Claims Court for a term of three years.

Idem

(2) A regional senior judge of the General Division may renew the appointment of a deputy judge for one or more three-year terms.

Idem

(3) The appointment of a person who was a deputy judge immediately before this section comes into force is deemed to be renewed under subsection (2) on the day this section comes into force. *New*.

Clerk and  
bailiff of  
Small Claims  
Court

**32.**—(1) There shall be a clerk and one or more bailiffs for each division of the Small Claims Court who shall be appointed by the Lieutenant Governor in Council.

Idem

(2) With the approval of the Deputy Attorney General or the person designated by the Deputy Attorney General, every clerk and bailiff of the Small Claims Court in a division that is not designated under clause 52 (1) (g) may appoint in writing a deputy who may exercise and perform all the powers and duties of the clerk or bailiff.

Referee

(3) The Lieutenant Governor in Council may appoint a referee for a division of the Small Claims Court. 1984, c. 11, s. 86 (4, 5), *amended*.

#### PROVINCIAL DIVISION

Provincial  
Division

**33.** The Provincial Court (Criminal Division), the Provincial Court (Family Division) and the Provincial Offences Court are amalgamated and continued as a court of record named the Ontario Court (Provincial Division). *New*.

Composition  
of Provincial  
Division

**34.** The Provincial Division shall consist of,

- (a) the Chief Judge of the Provincial Division appointed under subsection 41 (3), who shall be president of the Provincial Division;



- (b) a regional senior judge of the Provincial Division appointed under subsection 41 (4) for each region; and
- (c) such provincial judges as are appointed under subsection 41 (1). *New.*

**35.—**(1) The Chief Judge of the Provincial Division shall direct and supervise the sittings of the Provincial Division and the assignment of its judicial duties. 1984, c. 11, s. 63 (5), *amended.*

Powers and duties of Chief Judge of Provincial Division

(2) A regional senior judge of the Provincial Division shall, subject to the authority of the Chief Judge of the Provincial Division, exercise the powers and perform the duties of the Chief Judge of the Provincial Division in his or her region.

Regional senior judges, Provincial Division

(3) A regional senior judge of the Provincial Division may delegate to a judge of the Provincial Division in his or her region the authority to exercise specified functions. *New.*

Delegation

(4) If the Chief Judge of the Provincial Division is absent from Ontario or is for any reason unable to act, his or her powers and duties shall be exercised and performed by a regional senior judge of the Provincial Division designated by the Chief Judge of the Provincial Division. 1984, c. 11, s. 63 (7), *amended.*

Absence of Chief Judge of Provincial Division

(5) The powers and duties of a regional senior judge of the Provincial Division who is absent from Ontario or is for any reason unable to act shall be exercised and performed by a judge of the Provincial Division designated by the Chief Judge of the Provincial Division.

Absence of regional senior judge of Provincial Division

(6) The Chief Judge of the Provincial Division may hold meetings with the regional senior judges of the Provincial Division in order to consider any matters concerning sittings of the Provincial Division and the assignment of its judicial duties. *New.*

Meetings with regional senior judges

**36.—**(1) The Chief Judge of the Ontario Court (Provincial Division) shall assign every provincial judge to a region and may re-assign a judge from one region to another.

Judges assigned to regions

(2) Subsection (1) does not prevent the temporary assignment of a provincial judge to a location anywhere in Ontario. *New.*

Idem

**37.—**(1) A provincial judge has the power and authority of two or more justices of the peace when sitting in the

Criminal jurisdiction

Provincial Division and shall exercise the powers and perform the duties that any Act of the Parliament of Canada confers on a provincial court judge when sitting in the Provincial Division. 1984, c. 11, s. 67 (1), *amended*.

Provincial  
offences and  
family  
jurisdiction  
R.S.O. 1980,  
c. 400

(2) The Provincial Division shall perform any function assigned to it by or under the *Provincial Offences Act*, the *Family Law Act*, 1986, the *Children's Law Reform Act*, the *Child and Family Services Act*, 1984 or any other Act. 1984, c. 11, s. 69, s. 75 (1) (a), (k), *amended*.

1986, c. 4  
R.S.O. 1980,  
c. 68  
1984, c. 55

Youth court  
jurisdiction  
R.S.C. 1985,  
c. Y-1

(3) The Provincial Division is a youth court for the purposes of the *Young Offenders Act* (Canada). 1984, c. 11, s. 67 (2), s. 75 (1) (b), *amended*.

Judge to  
preside

**38.**—(1) A proceeding in the Provincial Division shall be heard and determined by one judge of the Provincial Division. 1984, c. 11, s. 66 (2), s. 74 (2), *amended*.

Justice of the  
peace may  
preside  
R.S.O. 1980,  
c. 400

(2) A justice of the peace may preside over the Provincial Division in a proceeding under the *Provincial Offences Act*. 1984, c. 11, s. 68 (2), *amended*.

Appeals

**39.**—(1) If no provision is made concerning an appeal from an order of the Provincial Division, an appeal lies to the General Division.

Exception  
R.S.C. 1985,  
c. C-46

(2) Subsection (1) does not apply to a proceeding under the *Criminal Code* (Canada) or the *Provincial Offences Act*. 1987, c. 1, s. 6, *amended*.

Penalty for  
disturbance  
outside  
courtroom

**40.** Any person who knowingly disturbs or interferes with a proceeding in the Provincial Division without reasonable justification while outside the courtroom is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both. 1984, c. 11, s. 72, *amended*.

#### PROVINCIAL JUDGES

Appointment  
of provincial  
judges

**41.**—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such provincial judges as are considered necessary.

Qualifications

(2) No person shall be appointed as a provincial judge unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years. 1984, c. 11, s. 52.

(3) The Lieutenant Governor in Council may appoint a provincial judge as Chief Judge of the Provincial Division. 1984, c. 11, s. 63 (1), *amended*. Chief Judge

(4) The Lieutenant Governor in Council may appoint a provincial judge to be the regional senior judge of the Provincial Division for each region. Regional senior judges

(5) The Chief Judge of the Provincial Division and the regional senior judges of the Provincial Division shall hold office for five years. Term of office

(6) If a successor is not appointed within five years, the Chief Judge or a regional senior judge shall continue in office until the successor is appointed, but in no case shall the Chief Judge or regional senior judge hold office for more than seven years. Idem

(7) A Chief Judge or a regional senior judge whose term of office expires under subsection (5) or (6) shall continue to hold the office of provincial judge and is entitled to an annual salary equal to the greater of, Former Chief Judge, etc.

(a) the current annual salary of a provincial judge; or

(b) the annual salary he or she received immediately before ceasing to be Chief Judge or regional senior judge.

(8) A Chief Judge or regional senior judge whose term of office expires under subsection (5) or (6) shall not be reappointed to the same position. *New.* Chief Judge, etc., not to be reappointed

**42.—**(1) A provincial judge shall devote his or her whole time to the performance of his or her duties as a judge, except as authorized by the Lieutenant Governor in Council. Other employment

(2) Despite subsection (1), a provincial judge who, before the 1st day of January, 1985, had the consent of the Attorney General to act as an arbitrator or conciliator may continue to so act. 1984, c. 11, s. 53, *amended*. Idem

**43.—**(1) Every provincial judge shall retire upon attaining the age of sixty-five years. Retirement

(2) Despite subsection (1), a provincial judge appointed as a full-time magistrate, judge of a juvenile and family court or master before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years. Idem



Continuation  
of judges in  
office

(3) A judge who has attained the age of sixty-five years may, subject to the annual approval of the Chief Judge of the Provincial Division, continue in office as a full-time or part-time judge until he or she attains the age of seventy years.

Idem

(4) A judge who has attained the age of seventy years may, subject to the annual approval of the Judicial Council, continue in office as a full-time or part-time judge until he or she has attained the age of seventy-five years.

Continuation  
of regional  
senior judge  
in office

(5) Subject to subsections 41 (5) and (6), a regional senior judge of the Provincial Division who is in office upon attaining the age of sixty-five years may, subject to the annual approval of the Chief Judge of the Provincial Division, continue in that office until he or she has attained the age of seventy years.

Idem

(6) Subject to subsections 41 (5) and (6), a regional senior judge of the Provincial Division who is in office upon attaining the age of seventy years may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years.

Continuation  
of  
Co-ordinator  
in office  
1989, c. 46

(7) Subject to subsections 13 (2) and (3) of the *Justices of the Peace Act, 1989*, if the Co-ordinator of Justices of the Peace is in office upon attaining the age of sixty-five years, he or she may, subject to the annual approval of the Chief Judge of the Provincial Division, continue in that office until he or she has attained the age of seventy years.

Idem

(8) Subject to subsections 13 (2) and (3) of the *Justices of the Peace Act, 1989*, if the Co-ordinator of Justices of the Peace is in office upon attaining the age of seventy years, he or she may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years. *New.*

Continuation  
in office of  
Chief Judge  
of Provincial  
Division

(9) Subject to subsections 41 (5) and (6), if the Chief Judge of the Provincial Division is in office upon attaining the age for retirement under subsection (1) or (2), he or she may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years. 1984, c. 11, s. 54, *amended*.

Resignation  
of judge

**44.—**(1) A provincial judge may at any time resign from his or her office by delivering a signed letter of resignation to the Attorney General.

Resignation  
as Chief  
Judge, etc.

(2) A Chief Judge or a regional senior judge may, before the expiry of his or her term of office under subsection 41 (5)

or (6), elect to hold the office of a provincial judge only, by delivering a signed letter to that effect to the Attorney General.

(3) The Co-ordinator of Justices of the Peace may, before the expiry of his or her term of office under subsection 13 (2) or (3) of the *Justices of the Peace Act*, 1989, elect to hold the office of a provincial judge only, by delivering a signed letter to that effect to the Attorney General. *New.*

Resignation  
of  
Co-ordinator  
1989, c. 46

(4) A resignation or election under this section takes effect on the day the letter is delivered to the Attorney General or, if the letter specifies a later day, on that day. 1984, c. 11, s. 55, s. 65, *amended.*

Effective  
date

**45.—**(1) A provincial judge may be removed from office before attaining retirement age only if,

Removal for  
cause

- (a) a complaint regarding the judge has been made to the Judicial Council; and
- (b) the removal is recommended by an inquiry held under section 49 on the ground that the judge has become incapacitated or disabled from the due execution of his or her office by reason of,
  - (i) infirmity,
  - (ii) conduct that is incompatible with the execution of his or her office, or
  - (iii) having failed to perform the duties of his or her office.

(2) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Legislative Assembly. 1984, c. 11, s. 56, *amended.*

Order for  
removal

**46.—**(1) The Judicial Council for Provincial Judges is continued as the Ontario Judicial Council and shall be composed of,

Judicial  
Council

- (a) the Chief Justice of Ontario, who shall preside over the Ontario Judicial Council;
- (b) the Associate Chief Justice of Ontario;
- (c) the Chief Justice of the Ontario Court;

- (d) the Chief Judge of the Ontario Court (Provincial Division);
- (e) the Treasurer of The Law Society of Upper Canada; and
- (f) not more than two other persons appointed by the Lieutenant Governor in Council.

**Quorum**

(2) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council.

**Staff**

R.S.O. 1980,  
c. 418

(3) Such officers and employees of the Judicial Council as are considered necessary may be appointed under the *Public Service Act*.

**Expert  
assistance**

(4) The Judicial Council may engage persons, including counsel, to assist it in its investigations. 1984, c. 11, s. 57, *amended*.

**Transition**

(5) An investigation commenced by the Judicial Council before this section comes into force shall be continued by the Judicial Council as it was constituted before this section comes into force. *New*.

**Functions**

**47.—**(1) The functions of the Judicial Council are,

- (a) to consider all proposed appointments of provincial judges and make a report on them to the Attorney General;
- (b) to receive and investigate complaints against provincial judges.

**Liability for  
damages**

(2) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer of it or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his or her duty. 1984, c. 11, s. 58.

**Investigation  
of complaints**

**48.—**(1) Where the Judicial Council receives a complaint against a provincial judge, it shall take such action to investigate the complaint as it considers advisable.

**Referral to  
Chief Judge**

(2) The Judicial Council may transmit those complaints it considers appropriate,

- (a) concerning provincial judges to the Chief Judge of the Provincial Division; and



(b) concerning masters to the Chief Justice of the Ontario Court.

(3) The proceedings of the Judicial Council shall not be public, but it may inform the Attorney General respecting matters that it has investigated and the Attorney General may make public the fact that an investigation has been undertaken.

Proceedings  
not public

(4) The Judicial Council may order that information or documents relating to its proceedings not be published or disclosed except as required by law.

Prohibiting  
publication

(5) The Judicial Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act.

Powers  
R.S.O. 1980,  
c. 411

(6) When the Judicial Council has dealt with a complaint regarding a provincial judge, it shall inform the following persons of its disposition of the complaint:

Notice of  
disposition

1. The person who made the complaint.
2. If the complaint was brought to the attention of the judge, the judge.

(7) The Judicial Council may report its opinion regarding the complaint to the Attorney General and may recommend,

Report and  
recommen-  
dations

- (a) that an inquiry be held under section 49;
- (b) that the judge be compensated for all or part of the costs incurred by the judge relating to the investigation.

(8) A copy of a report made under subsection (7) shall be given to the judge.

Copy to  
judge

(9) The Judicial Council shall not make a report under subsection (7) unless the judge was notified of the investigation and given an opportunity to be heard and to produce evidence on his or her behalf.

Right to be  
heard

(10) When the Judicial Council makes a report to the Attorney General under subsection (7), the Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so. 1984, c. 11, s. 59, *amended*.

Publication  
of report

## Inquiry

**49.**—(1) The Lieutenant Governor in Council may appoint a judge of the General Division to inquire into the question whether a provincial judge should be removed from office.

## Powers

R.S.O. 1980,  
c. 411

(2) The *Public Inquiries Act* applies to an inquiry under subsection (1).

## Report

(3) The report of the inquiry may recommend,

- (a) that the judge be removed from office;
- (b) that the judge be compensated for all or part of the costs incurred by the judge relating to the inquiry.

Tabling of  
report

(4) The report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session. 1984, c. 11, s. 60, *amended*.

Provincial  
Judges

Remuneration  
Commission

**50.**—(1) The committee known as the Ontario Provincial Courts Committee is continued as the Provincial Judges Remuneration Commission.

Composition  
of  
Commission

(2) The Commission shall be composed of the following three members:

1. One appointed jointly by the associations representing provincial judges.
2. One appointed by the Lieutenant Governor in Council.
3. One, who shall head the Commission, appointed jointly by the bodies referred to in paragraphs 1 and 2.

## Function

(3) The function of the Provincial Judges Remuneration Commission is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges, including the matters referred to in clauses 52 (1) (b) and (c).

Annual  
report

(4) The Commission shall make an annual report of its activities to the Lieutenant Governor in Council.

Tabling of  
recommen-  
dations

(5) Recommendations of the Commission and its annual report shall be laid before the Legislative Assembly if it is in

session or, if not, within fifteen days of the commencement of the next session. 1984, c. 11, s. 88, *amended*.

#### MISCELLANEOUS

**51.**—(1) The judges of the Ontario Court of Justice shall meet at least once in each year, on a day fixed by the Chief Justice of the Ontario Court, in order to consider this Act, the rules of court and the administration of justice generally. Meeting of judges

(2) The judges shall report their recommendations to the Attorney General. 1984, c. 11, s. 10, *amended*. Idem

(3) The judges of the Ontario Court of Justice in each region shall meet at least once in each year, on a day fixed by the regional senior judge of the General Division, in order to consider this Act, the rules of court and the administration of justice in the region generally. Regional meeting of judges

(4) The judges shall report their recommendations to the Attorney General. *New*. Idem

**52.**—(1) The Lieutenant Governor in Council may make regulations, Regulations

- (a) fixing the number of judges of the General Division who are in addition to the Chief Justice, the regional senior judges and the Senior Judge for the Unified Family Court;
- (b) fixing the remuneration of provincial judges and masters;
- (c) providing for the benefits to which provincial judges and masters are entitled, including,
  - (i) leave of absence and vacations,
  - (ii) sick leave credits and payments in respect of those credits,
  - (iii) pension benefits for provincial judges, masters and their surviving spouses and children;
- (d) prescribing territorial divisions for the Small Claims Court;
- (e) prescribing the maximum amount of a claim in the Small Claims Court for the purposes of subsection 22 (1);



R.S.O. 1980,  
c. 418

- (f) prescribing the maximum amount of a claim over which a deputy judge may preside for the purposes of subsection 23 (3);
- (g) providing for the retention of fees by clerks, bailiffs and referees of the Small Claims Court who are not civil servants under the *Public Service Act* and designating divisions where clerks, bailiffs and referees of the Small Claims Court may be appointed to a position as a civil servant under that Act;
- (h) prescribing the duties of clerks, bailiffs and referees of the Small Claims Court;
- (i) prescribing for each region the minimum number of judges of the General Division and of the Provincial Division who are to be assigned to that region. 1984, c. 11, s. 4 (2), s. 20 (4), s. 87 (1), *amended*.

Idem

(2) A reduction in the number of judges of the General Division under clause (1) (a) does not affect appointments existing at the time of the reduction. 1984, c. 11, s. 4 (2), *amended*.

Contributions

(3) Regulations made under clause (1) (c) may require judges and masters to contribute from their salaries part of the costs of benefits and may fix the amount of the contributions.

Application  
of  
R.S.O. 1980,  
c. 419

(4) A regulation made under clause (1) (c) may modify or exclude the application of the *Public Service Superannuation Act*.

Application  
of regulations

(5) A regulation made under subsection (1) may be general or particular in its application. 1984, c. 11, s. 20 (5-7), s. 87 (2-4), *amended*.

### PART III

#### UNIFIED FAMILY COURT

Unified  
Family Court

**53.** The Unified Family Court is continued as a superior court of record in and for The Regional Municipality of Hamilton-Wentworth. 1984, c. 11, s. 38, *amended*.

Composition  
of court

**54.—**(1) The Unified Family Court shall be presided over by,

(a) a judge of the Ontario Court (General Division) appointed as senior judge for the Unified Family Court; or

(b) a judge of the Ontario Court (General Division),

who is authorized under subsection (3) to exercise the jurisdiction of a judge of the Ontario Court (Provincial Division).

(2) The senior judge for the Unified Family Court shall supervise and direct the sittings and the assignment of the judicial duties of the Unified Family Court.

Duties of  
senior judge

(3) The Lieutenant Governor in Council may authorize a judge of the General Division to exercise the jurisdiction of a judge of the Provincial Division.

Authority for  
Provincial  
Division  
matters

(4) A judge who may preside over the Unified Family Court shall exercise his or her jurisdiction as a judge of the General Division or a judge of the Provincial Division in the matters in which the General Division or the Provincial Division or a judge of one of them has jurisdiction under the statutory provisions set out in the Schedule to this Part. 1984, c. 11, s. 39; 1987, c. 1, s. 1, *amended*.

Exercise of  
existing  
jurisdiction

**55.**—(1) Proceedings taken in a court in The Regional Municipality of Hamilton-Wentworth under the statutory provisions set out in the Schedule to this Part, other than by way of appeal, shall be commenced and titled in the Unified Family Court and the jurisdiction of the court shall be exercised in the Unified Family Court.

Proceedings  
in Unified  
Family Court

(2) A motion for interim relief under the *Divorce Act*, 1985 (Canada), the *Family Law Act*, 1986 or the *Children's Law Reform Act* in a proceeding in the General Division shall be heard in the Unified Family Court if it is required or permitted to be heard in The Regional Municipality of Hamilton-Wentworth by the rules of court or an order of the court. 1984, c. 11, s. 40 (1, 2) *amended*.

Idem  
S.C. 1986,  
c. 4  
1986, c. 4  
R.S.O. 1980,  
c. 68

(3) All proceedings commenced in or transferred to the Unified Family Court shall be heard and determined without a jury. 1984, c. 11, s. 40 (4), *amended*.

No jury

**56.** Where a proceeding is commenced in the Unified Family Court in a matter over which jurisdiction may be exercised in the Unified Family Court and is combined with a related matter in the jurisdiction of the judge but respecting which jurisdiction may not be exercised in the Unified Family

Other  
jurisdiction

Court, the court may, with leave of the judge, hear and determine the combined matters. 1984, c. 11, s. 41, *amended*.

Orders of  
predecessor  
court

**57.**—(1) The Unified Family Court may hear and determine an application under an Act to discharge, vary or suspend an order made by the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth.

Enforcement

(2) The Unified Family Court may enforce orders made by the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth. 1984, c. 11, s. 42, *amended*.

Place where  
proceedings  
commenced

**58.**—(1) Subject to subsection (2), proceedings referred to in subsection 55 (1) may be commenced in the Unified Family Court where the applicant or the respondent resides in The Regional Municipality of Hamilton-Wentworth. 1984, c. 11, s. 44 (1), *amended*.

Idem,  
custody or  
access  
R.S.O. 1980,  
c. 68

(2) An application under Part III of the *Children's Law Reform Act* in respect of a child who ordinarily resides in The Regional Municipality of Hamilton-Wentworth may be commenced in the Unified Family Court. 1984, c. 11, s. 44 (2), *amended*.

Transfer to  
other court

(3) A judge who may preside over the Unified Family Court may, on motion, order that a proceeding commenced in the Unified Family Court be transferred to the appropriate court in a place where there is no Unified Family Court if, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by that court. 1984, c. 11, s. 44 (3).

Transfer  
from other  
court

(4) A judge of a court having jurisdiction in a proceeding under a statutory provision set out in the Schedule to this Part in an area other than The Regional Municipality of Hamilton-Wentworth may, on motion, order that the proceeding be transferred to the Unified Family Court if, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by that court. 1984, c. 11, s. 44 (4), *amended*.

Directions

(5) A judge making an order under subsection (3) or (4) may give such directions for the transfer as are considered just. 1984, c. 11, s. 44 (5).

Status of  
orders

**59.** An order of a judge presiding over the Unified Family Court made in the exercise of his or her jurisdiction as a judge of the Ontario Court (General Division) is an order of the General Division for all purposes. 1984, c. 11, s. 45, *amended*.



**60.**—(1) Subject to subsections (2) and (3), a provision for an appeal from an order made under the statutory provisions set out in the Schedule to this Part applies to an order when made in the exercise of the jurisdiction by a judge presiding over the Unified Family Court. Appeals

(2) Where an order made by the Unified Family Court under a statutory provision set out in the Schedule to this Part is within the jurisdiction of the Ontario Court (General Division) outside The Regional Municipality of Hamilton-Wentworth, the order shall, for the purposes of an appeal, be deemed to have been made by a judge of the General Division. 1984, c. 11, s. 46 (1, 2), *amended*. Idem

(3) A provision for an appeal to the Ontario Court (General Division) or a judge of it from an order made by the Unified Family Court under the statutory provisions set out in the Schedule to this Part shall be deemed to provide for an appeal to the Divisional Court. *New*. Idem

(4) Where no provision is made for an appeal from an order of a judge presiding over the Unified Family Court, an appeal lies, Idem

(a) to the Court of Appeal from a final order, except an order referred to in clause (b);

(b) to the Divisional Court from a final order,

(i) for a single payment of not more than \$25,000, exclusive of costs,

(ii) for periodic payments that amount to not more than \$25,000, exclusive of costs, in the twelve months commencing on the date the first payment is due under the order,

(iii) dismissing a claim for an amount that is not more than the amount set out in subclause (i) or (ii), or

(iv) dismissing a claim for an amount that is more than the amount set out in subclause (i) or (ii) and in respect of which the judge indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in subclause (i) or (ii); or

- (c) to the Divisional Court from an interlocutory order, with leave as provided in the rules of court. 1984, c. 11, s. 46 (4), *amended*.

Criminal  
jurisdiction

**61.**—(1) A judge presiding over the Unified Family Court has all the powers of a judge sitting in the Ontario Court (Provincial Division) for the purposes of proceedings under the *Criminal Code* (Canada).

R.S.C. 1985,  
c. C-46

Idem

(2) The Unified Family Court shall be deemed to be and shall sit as the Provincial Division,

- (a) for the purpose of dealing with young persons as defined in the *Provincial Offences Act*; and

R.S.O. 1980,  
c. 400

- (b) for the purpose of prosecutions under the *Family Law Act, 1986*, the *Children's Law Reform Act*, the *Minors' Protection Act* and Part III (Child Protection) and Part VII (Adoption) of the *Child and Family Services Act, 1984*.

1986, c. 4  
R.S.O. 1980,  
cc. 68, 293  
1984, c. 55

Idem

(3) The Unified Family Court is a youth court for the purpose of the *Young Offenders Act* (Canada). 1984, c. 11, s. 47, *amended*.

R.S.C. 1985,  
c. Y-1

Conciliation  
service

**62.** A conciliation service may be established, maintained and operated as part of the Unified Family Court. 1984, c. 11, s. 49.

Rules

**63.**—(1) The Lieutenant Governor in Council may make rules for the Unified Family Court in relation to the practice and procedure of the court and may make rules for the court, even though they alter or conform to the substantive law, in relation to,

- (a) conduct of proceedings in the court;
- (b) joinder of claims and parties, and representation of parties;
- (c) commencement of proceedings and service of process in or outside Ontario;
- (d) discovery and other forms of disclosure before hearing, including their scope and their admissibility and use in a proceeding;
- (e) examination of witnesses in or out of court;
- (f) duties of clerks and other officers;

- (g) references of proceedings or issues in a proceeding and the powers of a person conducting a reference;
- (h) costs of proceedings;
- (i) enforcement of orders and process;
- (j) payment into and out of court;
- (k) any matter that is referred to in an Act as provided for by rules of court.

(2) Nothing in subsection (1) authorizes the making of rules that conflict with an Act, but rules may be made under subsection (1) supplementing the provisions of an Act in respect of practice and procedure. Idem

(3) The rules of court made under Part IV do not apply to proceedings in the Unified Family Court. 1984, c. 11, s. 51, *amended*. Idem

## SCHEDULE

Jurisdiction under the following statutory provisions:

	Statutes	Provisions
1.	Annulment of Marriages Act (Ontario) (Canada)	All
2.	Change of Name Act, 1986	All
3.	Child and Family Services Act, 1984	Parts III, VI and VII
4.	Children's Law Reform Act	All, except sections 60 and 61
5.	Divorce Act, 1985 (Canada)	All
6.	Education Act	Sections 29 and 30
7.	Family Law Act, 1986	All, except Part V
8.	Marriage Act	Sections 6 and 9
9.	Minors' Protection Act	Section 2
10.	Reciprocal Enforcement of Maintenance Orders Act, 1982	All
11.	Support and Custody Orders Enforcement Act, 1985	All
12.	Young Offenders Act (Canada)	All



## PART IV

## RULES OF COURT

Civil Rules  
Committee

**64.**—(1) The Civil Rules Committee is established and shall be composed of,

- (a) the Chief Justice of Ontario, the Associate Chief Justice of Ontario, the Chief Justice of the Ontario Court and the Chief Judge of the Ontario Court (Provincial Division);
- (b) one judge of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;
- (c) nine judges of the Ontario Court (General Division), who shall be appointed by the Chief Justice of the Ontario Court;
- (d) the Attorney General or a person designated by the Attorney General;
- (e) one law officer of the Crown, who shall be appointed by the Attorney General;
- (f) two persons employed in the administration of the courts, who shall be appointed by the Attorney General;
- (g) four barristers and solicitors, who shall be appointed by the Benchers of The Law Society of Upper Canada in convocation;
- (h) one barrister and solicitor, who shall be appointed by the Chief Justice of Ontario; and
- (i) four barristers and solicitors, who shall be appointed by the Chief Justice of the Ontario Court.

Idem

(2) The Chief Justice of Ontario shall preside over the Civil Rules Committee but, if the Chief Justice of Ontario is absent or so requests, another member designated by the Chief Justice of Ontario shall preside.

Tenure of  
office

(3) Each of the members of the Civil Rules Committee appointed under clauses (1) (b), (c), (e), (f), (g), (h) and (i) shall hold office for a period of three years and is eligible for reappointment.

(4) Where a vacancy occurs among the members appointed under clause (1) (b), (c), (e), (f), (g), (h) or (i), a new member similarly qualified may be appointed for the remainder of the unexpired term. Vacancies

(5) A majority of the members of the Civil Rules Committee constitutes a quorum. 1984, c. 11, s. 89, *amended*. Quorum

**65.**—(1) Subject to the approval of the Lieutenant Governor in Council, the Civil Rules Committee may make rules for the Court of Appeal and the Ontario Court (General Division) in relation to the practice and procedure of those courts in all civil proceedings, including family law proceedings. Civil Rules

(2) The Civil Rules Committee may make rules for the courts described in subsection (1), even though they alter or conform to the substantive law, in relation to, Idem

- (a) conduct of proceedings in the courts;
- (b) joinder of claims and parties, settlement of claims by or against persons under disability, whether or not a proceeding has been commenced in respect of the claim, the binding effect of orders and representation of parties;
- (c) commencement of proceedings, representation of parties by solicitors and service of process in or outside Ontario;
- (d) disposition of proceedings without a hearing and its effect and authorizing the Court of Appeal to determine in the first instance a special case arising in a proceeding commenced in the Ontario Court (General Division);
- (e) pleadings;
- (f) discovery and other forms of disclosure before hearing, including their scope and the admissibility and use of that discovery and disclosure in a proceeding;
- (g) examination of witnesses in or out of court;
- (h) jurisdiction of masters, including the conferral on masters of any jurisdiction of the Ontario Court (General Division), including jurisdiction under an Act, but not including the trial of actions or jurisdiction conferred by an Act on a judge;

- (i) jurisdiction and duties of officers;
- (j) motions and applications, including the hearing of motions in the absence of the public and prohibiting a party from making motions without leave;
- (k) preservation of rights of parties pending the outcome of litigation, including sale, recovery of possession or preservation of property;
- (l) interpleader;
- (m) preparation for trial and offers to settle and their legal consequences;
- (n) the mode and conduct of trials;
- (o) the appointment by the court of independent experts, their remuneration and the admissibility and use of their reports;
- (p) the discount rate to be used in determining the amount of an award in respect of future pecuniary damages;
- (q) references of proceedings or issues in a proceeding and the powers of a person conducting a reference;
- (r) costs of proceedings, including security for costs and a solicitor's liability for or disentitlement to costs;
- (s) enforcement of orders and process or obligations under the rules;
- (t) the time for and procedure on appeals and stays pending appeal;
- (u) payment into and out of court;
- (v) any matter that is referred to in an Act as provided for by rules of court.

Idem

(3) Nothing in subsection (1) or (2) authorizes the making of rules that conflict with an Act, but rules may be made under subsections (1) and (2) supplementing the provisions of an Act in respect of practice and procedure. 1984, c. 11, s. 90, *amended*.

Family Rules  
Committee

**66.—**(1) The Family Rules Committee is established and shall be composed of,



- (a) the Chief Justice of Ontario, the Associate Chief Justice of Ontario, the Chief Justice of the Ontario Court and the Chief Judge of the Ontario Court (Provincial Division);
- (b) the senior judge for the Unified Family Court;
- (c) one judge of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;
- (d) three judges of the Ontario Court (General Division), who shall be appointed by the Chief Justice of the Ontario Court;
- (e) four judges of the Ontario Court (Provincial Division), who shall be appointed by the Chief Judge of the Ontario Court (Provincial Division);
- (f) the Attorney General or a person designated by the Attorney General;
- (g) one law officer of the Crown, who shall be appointed by the Attorney General;
- (h) two persons employed in the administration of the courts, who shall be appointed by the Attorney General;
- (i) four barristers and solicitors, who shall be appointed by the Benchers of The Law Society of Upper Canada in convocation;
- (j) two barristers and solicitors, who shall be appointed by the Chief Justice of the Ontario Court; and
- (k) two barristers and solicitors, who shall be appointed by the Chief Judge of the Ontario Court (Provincial Division).

(2) The Chief Justice of Ontario shall preside over the Family Rules Committee but, if the Chief Justice of Ontario is absent or so requests, another member designated by the Chief Justice shall preside. Idem

(3) Each of the members of the Family Rules Committee appointed under clauses (1) (c), (d), (e), (g), (h), (i), (j) and (k) shall hold office for a period of three years and is eligible for reappointment. Tenure of office

## Vacancies

(4) Where a vacancy occurs among the members appointed under clause (1) (c), (d), (e), (g), (h), (i), (j) or (k), a new member similarly qualified may be appointed for the remainder of the unexpired term.

## Quorum

(5) A majority of the members of the Family Rules Committee constitutes a quorum. *New.*

## Family Rules

**67.**—(1) Subject to the approval of the Lieutenant Governor in Council, the Family Rules Committee may make rules for the Court of Appeal, the Ontario Court (General Division) and the Ontario Court (Provincial Division) in relation to the practice and procedure of those courts in proceedings under statutory provisions set out in the Schedule to Part III (Unified Family Court), except proceedings under the *Young Offenders Act* (Canada).

R.S.C. 1985,  
c. Y-1

## Idem

(2) Subsections 65 (2) and (3) apply with necessary modifications to the Family Rules Committee making rules for the courts described in subsection (1).

May modify  
civil rules

(3) The rules made by the Family Rules Committee may adopt, modify or exclude the rules made by the Civil Rules Committee.

Rules for  
*Young  
Offenders Act*

(4) Subject to the approval of the Lieutenant Governor in Council, the Family Rules Committee may prepare rules for the purpose of section 68 of the *Young Offenders Act* (Canada) for consideration by the Ontario Court (Provincial Division). *New.*

Criminal  
Rules  
Committee

**68.**—(1) The Criminal Rules Committee is established and shall be composed of,

- (a) the Chief Justice of Ontario, the Associate Chief Justice of Ontario, the Chief Justice of the Ontario Court and the Chief Judge of the Ontario Court (Provincial Division);
- (b) one judge of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;
- (c) three judges of the Ontario Court (General Division), who shall be appointed by the Chief Justice of the Ontario Court;
- (d) four judges of the Ontario Court (Provincial Division), who shall be appointed by the Chief Judge of the Ontario Court (Provincial Division);

- (e) the Co-ordinator of Justices of the Peace;
- (f) the Attorney General or a person designated by the Attorney General;
- (g) one law officer of the Crown, who shall be appointed by the Attorney General;
- (h) three Crown attorneys, deputy Crown attorneys or assistant Crown attorneys, who shall be appointed by the Attorney General;
- (i) two persons employed in the administration of the courts, who shall be appointed by the Attorney General;
- (j) two barristers and solicitors, who shall be appointed by the Benchers of The Law Society of Upper Canada in convocation;
- (k) one barrister and solicitor, who shall be appointed by the Chief Justice of Ontario;
- (l) one barrister and solicitor, who shall be appointed by the Chief Justice of the Ontario Court; and
- (m) one barrister and solicitor, who shall be appointed by the Chief Judge of the Ontario Court (Provincial Division).

(2) The Chief Justice of Ontario shall preside over the Criminal Rules Committee but, if the Chief Justice of Ontario is absent or so requests, another member designated by the Chief Justice of Ontario shall preside. Idem

(3) Each of the members of the Criminal Rules Committee appointed under clauses (1) (b), (c), (d), (e), (g), (h), (i), (j), (k), (l) and (m) shall hold office for a period of three years and is eligible for reappointment. Tenure of office

(4) Where a vacancy occurs among the members appointed under clause (1) (b), (c), (d), (e), (g), (h), (i), (j), (k), (l) or (m), a new member similarly qualified may be appointed for the remainder of the unexpired term. Vacancies

(5) A majority of the members of the Criminal Rules Committee constitutes a quorum. *New.* Quorum

**69.**—(1) Subject to the approval of the Lieutenant Governor in Council, the Criminal Rules Committee may prepare Criminal Rules



R.S.C. 1985,  
c. C-46

rules for the purposes of section 482 of the *Criminal Code* (Canada) for consideration by the Court of Appeal, the Ontario Court (General Division) and the Ontario Court (Provincial Division).

Provincial  
offences rules

(2) Subject to the approval of the Lieutenant Governor in Council, the Criminal Rules Committee may make rules for the Court of Appeal, the Ontario Court (General Division) and the Ontario Court (Provincial Division) in relation to the practice and procedure of those courts in proceedings under the *Provincial Offences Act*. *New*.

R.S.O. 1980,  
c. 400

Idem

(3) The Criminal Rules Committee may make rules under subsection (2),

- (a) regulating any matters relating to the practice and procedure of proceedings under the *Provincial Offences Act*;
- (b) prescribing forms;
- (c) regulating the duties of the employees of the courts;
- (d) prescribing and regulating the procedures under any Act that confers jurisdiction under the *Provincial Offences Act* on the Ontario Court (Provincial Division) or a judge or justice of the peace sitting in it;
- (e) prescribing any matter relating to proceedings under the *Provincial Offences Act* that is referred to in an Act as provided for by the rules of court. 1984, c. 11, s. 73 (3), *amended*.

**3. Sections 92 and 93 of the said Act are repealed and the following substituted therefor:**

Ontario  
Courts  
Management  
Advisory  
Committee

**92.**—(1) There shall be a committee, known as the Ontario Courts Management Advisory Committee, composed of,

- (a) the Chief Justice of Ontario, the Associate Chief Justice of Ontario, the Chief Justice of the Ontario Court and the Chief Judge of the Ontario Court (Provincial Division);
- (b) the Attorney General, the Deputy Attorney General, the Assistant Deputy Attorney General responsible for courts administration and the

Assistant Deputy Attorney General responsible for criminal law;

- (c) two barristers and solicitors appointed by the Benchers of the Law Society of Upper Canada in convocation and two barristers and solicitors appointed by the presidents of the county and district law associations; and
- (d) not more than four other persons, appointed by the Attorney General with the concurrence of,
  - (i) all of the judges mentioned in clause (a), and
  - (ii) all of the barristers and solicitors appointed under clause (c).

(2) The following persons shall preside over meetings of the Committee, by rotation at intervals fixed by the Committee: Who to preside

1. A judge mentioned in clause (1) (a) selected by the judges mentioned in that clause.
2. The Attorney General or a person mentioned in clause (1) (b) and designated by the Attorney General.
3. A barrister and solicitor appointed under clause (1) (c) selected by the barristers and solicitors appointed under that clause.
4. A person appointed under clause (1) (d) selected by the persons appointed under that clause.

(3) The function of the Committee is to consider and recommend to the appropriate authority policies and procedures to promote the better administration of justice and the effective use of resources, including judicial and other personnel, in the public interest. *New.* Function of Committee

**92a.**—(1) For judicial purposes, Ontario is divided into the regions prescribed under subsection (2). Regions for judicial purposes

(2) The Lieutenant Governor in Council may make regulations prescribing regions for the purpose of this Act. *New.* Regulations

**92b.**—(1) There shall be a committee in each region, known as the Regional Courts Management Advisory Committee, composed of, Regional Courts Management Advisory Committee

- (a) the regional senior judge of the Ontario Court (General Division) and the regional senior judge of the Ontario Court (Provincial Division);
- (b) the regional director of courts administration for the Ministry of the Attorney General and the regional director of Crown attorneys;
- (c) two barristers and solicitors appointed jointly by the presidents of the county and district law associations in the region; and
- (d) not more than two other persons, appointed by the Attorney General with the concurrence of,
  - (i) both of the judges mentioned in clause (a), and
  - (ii) both of the barristers and solicitors appointed under clause (c).

Who to  
preside

(2) The following persons shall preside over meetings of the Committee, by rotation at intervals fixed by the Committee:

- 1. A judge mentioned in clause (1) (a) selected by the judges mentioned in that clause.
- 2. An official mentioned in clause (1) (b) selected by the officials mentioned in that clause.
- 3. A barrister and solicitor appointed under clause (1) (c) selected by the barristers and solicitors appointed under that clause.
- 4. A person appointed under clause (1) (d) selected by the persons appointed under that clause.

Function of  
Committee

(3) The function of the Committee is to consider and recommend to the appropriate authority policies and procedures for the region to promote the better administration of justice and the effective use of resources, including judicial and other personnel, in the public interest.

Frequency of  
meetings

(4) The Committee shall meet at least four times each year.  
*New.*

Powers of  
chief or  
regional  
senior judge

**93.—**(1) The powers and duties of a judge who has authority to supervise and direct the sittings and the assignment of the judicial duties of his or her court include the following:



1. Determining the sittings of the court.
2. Assigning judges to the sittings.
3. Assigning cases to individual judges.
4. Determining the sitting schedules and places of sittings for individual judges.
5. Determining the total annual, monthly and weekly workload of individual judges.
6. Preparing trial lists and assigning courtrooms, to the extent necessary to control the determination of who is assigned to hear particular cases. 1984, c. 11, s. 93, *amended*.

(2) Subsection (1) applies with necessary modifications in respect of supervising and directing the sittings and assigning the judicial duties of masters. *New.*

Powers in respect of masters

**4. Section 94 of the said Act, as amended by the Statutes of Ontario, 1989, chapter 24, section 4, is further amended by adding thereto the following subsections:**

(2) A power or duty given to a registrar, sheriff, court clerk, assessment officer or official examiner under an Act, regulation or rule of court may be exercised or performed by a person or class of persons to whom the power or duty has been assigned by the Deputy Attorney General or a person designated by the Deputy Attorney General.

Exercise of powers of registrar, sheriff, etc.

(3) Subsection (2) applies in respect of an Act, regulation or rule of court made under the authority of the Legislature or of the Parliament of Canada.

Idem

**5. The said Act is amended by adding thereto the following section:**

**95a.** Documents and other material that are no longer required in a court office shall be disposed of in accordance with the directions of the Deputy Attorney General, subject to the approval of,

Destruction of documents

- (a) in the Court of Appeal, the Chief Justice of Ontario;
- (b) in the Ontario Court (General Division), the Chief Justice of the Ontario Court;

- (c) in the Ontario Court (Provincial Division), the Chief Judge of the Provincial Division;
- (d) in the Unified Family Court, the Senior Judge for the Unified Family Court. 1984, c. 11, s. 101 (4), *amended*.

**6. Section 98 of the said Act is repealed and the following substituted therefor:**

Liability of  
judges

**98.** Every judge of a court in Ontario and every master has the same immunity from liability as a judge of the Ontario Court (General Division).

**7. Section 99 of the said Act is repealed and the following substituted therefor:**

Compensation for  
statutory  
duties

**99.** Every judge who was a judge of the Supreme Court or of the District Court before this section comes into force shall be paid out of the Consolidated Revenue Fund the annual sum of \$3,000, payable quarterly, as compensation for the services the judge is called on to render by any Act of the Legislature in addition to his or her ordinary duties.

**8.** Subsection 100 (1) of the said Act is amended by striking out "Supreme Court or the District Court" in the first and second lines and inserting in lieu thereof "Court of Appeal or the Ontario Court (General Division)".

**9.** The said Act is further amended by adding thereto the following sections:

Judges'  
gowns

**100a.** The Lieutenant Governor in Council may make regulations respecting the form of the gown to be worn in court by all judges appointed after this section comes into force.

How certain  
judges to be  
addressed

**100b.**—(1) Every judge of the Ontario Court (General Division) and the Unified Family Court may be addressed as "Your Honour" or as "(*Mr. or Mme.*) Justice (*naming the judge*)".

Idem

(2) A judge appointed to the High Court of Justice before this section comes into force may elect to be addressed according to the practice in existence before this section comes into force.

**10.** Section 101 of the said Act is repealed and the following substituted therefor:

**101.**—(1) Every person who was a master of the Supreme Court before this section comes into force is a master of the Ontario Court (General Division). *New.*

Masters

(2) Every master has the jurisdiction conferred by the rules of court in proceedings in the General Division. 1984, c. 11, s. 20 (3).

Jurisdiction

(3) Sections 42 to 49 apply with necessary modifications to masters in the same manner as to provincial judges. 1984, c. 11, s. 20 (11), *amended.*

Application of ss. 42-49

(4) The right of a master to continue in office under subsection 43 (3) is subject to the approval of the Chief Justice of the Ontario Court and not of the Chief Judge of the Provincial Division. *New.*

Idem

**101a.**—(1) Money paid into the Ontario Court (General Division) shall be paid to the Accountant of the Ontario Court and such money and securities in which the money is invested are vested in the Accountant.

Money vested in Accountant

(2) Mortgages and other securities taken under an order of the Ontario Court (General Division) and instruments taken as security in respect of a proceeding in the Ontario Court (General Division) shall be taken in the name of the Accountant and shall be deposited in his or her office, except where an order provides otherwise.

Security held by Accountant

(3) The Accountant has no duty or obligation in respect of the instruments deposited under subsection (2) except as custodian of the instruments, unless an order of the court provides otherwise.

Idem

(4) The Provincial Auditor shall examine and report on the accounts and financial transactions of the Accountant. 1984, c. 11, s. 22, *amended.*

Audit by Provincial Auditor

**101b.**—(1) The finance committee is continued and shall be composed of three persons appointed by the Lieutenant Governor in Council.

Finance committee

(2) The finance committee has control and management of the money in the Ontario Court (General Division), the investment of the money and the securities in which it is invested.

Management of court funds

(3) Money that is available for investment shall be invested in investments in which the Treasurer of Ontario may invest

Investment of court funds



R.S.O. 1980,  
c. 161      public money under section 3 of the *Financial Administration Act*.

Employment  
of trust  
company      (4) The finance committee may employ a trust company to make the investments or act as custodian of the securities purchased as investments.

Interest      (5) The finance committee may provide for the payment of interest on money paid into the General Division and may fix the rate of interest so paid.

Reserve  
funds      (6) The finance committee may establish such reserve funds as it considers necessary. 1984, c. 11, s. 23, *amended*.

**11. Subsection 102 (3) of the said Act is amended by striking out “Rules of Civil Procedure” in the third line and inserting in lieu thereof “rules of court”.**

**12. Section 103 of the said Act is repealed and the following substituted therefor:**

Assessment  
officers      **103.—**(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint assessment officers.

Idem      (2) Every master is an assessment officer.

Jurisdiction      (3) Every assessment officer has jurisdiction to assess costs in a proceeding in any court.

Appeal from  
assessment of  
costs before  
tribunal      (4) Where costs of a proceeding before a tribunal other than a court are to be assessed by an assessment officer,

(a) the rules of court governing the procedure on an assessment of costs apply with necessary modifications; and

(b) an appeal lies to the Ontario Court (General Division) from a certificate of assessment of the costs if an objection was served in respect of the issue appealed in accordance with the rules of court.

**13.—**(1) Subsection 104 (1) of the said Act is repealed.

(2) Subsection 104 (2) of the said Act is amended by striking out “additional” in the second line.

**14.—**(1) Subsection 108 (2) of the said Act is amended by striking out “and” where it occurs the second time in the third

line and by inserting after "hearing)" in the fourth line "and 153a (where procedures not provided)".

(2) Subsection 108 (3) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 24, section 4, is repealed and the following substituted therefor:

(3) Sections 122 (constitutional questions), 135, 136 (language of proceedings), 142 (judge sitting on appeal), 146 (prohibition against photography at court hearings), 152a (arrest and committal warrants enforceable by police) and 153a (where procedures not provided) also apply to proceedings under the *Provincial Offences Act* and, for the purpose, a reference in one of those sections to a judge includes a justice of the peace presiding in the Ontario Court (Provincial Division).

Application  
to provincial  
offences

R.S.O. 1980,  
c. 400

**15. Subsection 109 (3) of the said Act is repealed and the following substituted therefor:**

(3) Only the Court of Appeal, the Unified Family Court and the Ontario Court (General Division), may grant equitable relief, unless otherwise provided.

Jurisdiction  
for equitable  
relief

**16. Section 110 of the said Act is amended by striking out "Supreme Court, the District Court and the Unified Family Court" in the first and second lines and inserting in lieu thereof "Court of Appeal, the Unified Family Court and the Ontario Court (General Division)".**

**17. Subsection 114 (1) of the said Act is amended by striking out "Supreme Court, the District Court or the Unified Family Court" in the first and second lines and inserting in lieu thereof "Unified Family Court or the Ontario Court (General Division)".**

**18.—(1) Subsection 118 (1) is repealed and the following substituted therefor:**

(1) In this section, "health practitioner" means a person licensed to practise medicine or dentistry in Ontario or any other jurisdiction, a psychologist registered under the *Psychologists Registration Act* or a person certified or registered as a psychologist by another jurisdiction.

"health  
practitioner"  
defined  
R.S.O. 1980,  
c. 404

(2) Subsection 118 (2) of the said Act is amended by striking out "medical" in the fourth line and inserting in lieu thereof "health".

**(3) Subsection 118 (5) of the said Act is amended by striking out “medical” in the second line and inserting in lieu thereof “health”.**

**19. Subsections 120 (2) and (3) of the said Act are repealed and the following substituted therefor:**

Transfer  
from Small  
Claims Court

(2) A proceeding in the Small Claims Court shall not be transferred under clause (1) (d) to the Ontario Court (General Division) without the consent of the plaintiff in the proceeding in the Small Claims Court.

Idem

(2a) A proceeding in the Small Claims Court shall not be required under subclause (1) (e) (ii) to be asserted by way of counterclaim in a proceeding in the Ontario Court (General Division) without the consent of the plaintiff in the proceeding in the Small Claims Court.

Motions

(3) The motion shall be made to a judge of the Ontario Court (General Division).

**20.—(1) Subsection 121 (1) of the said Act is amended by striking out “a Supreme Court or District Court action” in the first line and inserting in lieu thereof “an action in the Ontario Court (General Division) that is not in the Small Claims Court”.**

(2) Subsection 121 (2) of the said Act is amended by striking out “Actions in which a claim is made for any of the following kinds of relief shall be heard without a jury:” in the first and second lines and inserting in lieu thereof “The issues of fact and the assessment of damages in an action shall be tried without a jury in respect of a claim for any of the following kinds of relief:”.

(3) Paragraph 3 of the said subsection 121 (2) is amended by striking out “*Family Law Reform Act*” in the first and second lines and inserting in lieu thereof “*Family Law Act, 1986*”.

**21. Subsection 122 (2) of the said Act is amended by striking out “Rules of Civil Procedure” in the second line and inserting in lieu thereof “rules of court”.**

**22. Subsection 124 (2) of the said Act is repealed and the following substituted therefor:**

Idem

(2) Mutual debts may be set off against each other even if they are of a different nature.



**23.** Clause 129 (b) of the said Act is amended by striking out "*Family Law Reform Act*" in the first line and inserting in lieu thereof "*Family Law Act, 1986*".

**24.—**(1) Clause 133 (1) (a) of the said Act is amended by striking out "the" in the first line and inserting in lieu thereof "a".

(2) Clause 133 (1) (b) of the said Act is amended by striking out "local judge or".

**25.—**(1) Subclause 136 (1) (a) (ii) of the said Act is repealed and the following substituted therefor:

(ii) the area that comprised the County of Welland as it existed on the 31st day of December, 1969,

(iia) The Regional Municipality of Ottawa-Carleton,

(iib) The Municipality of Metropolitan Toronto.

(2) Subsection 136 (6) of the said Act is amended by striking out "Provincial Court (Family Division) or the Provincial Court (Civil Division)" in the second and third lines and inserting in lieu thereof "Ontario Court (Provincial Division) or the Small Claims Court".

(3) Subsection 136 (7) of the said Act is amended by striking out "in the Provincial Offences Court where it is" in the second and third lines and inserting in lieu thereof "under the *Provincial Offences Act* in".

**26.** Subsection 137 (2) of the said Act is amended by striking out "the Registrar of the Supreme Court" in the first and second lines and inserting in lieu thereof "a person designated by the Deputy Attorney General".

**27.—**(1) Subsection 150 (1) of the said Act is amended by striking out "Supreme Court" in the first line and in the last line and inserting in lieu thereof in each instance "Ontario Court (General Division)".

(2) Subsection 150 (3) of the said Act is amended by striking out "Supreme Court" in the fourth line and inserting in lieu thereof "Ontario Court (General Division)".

**28.** The said Act is further amended by adding thereto the following sections:

Civil orders directed to sheriffs

**150a.**—(1) Unless an Act provides otherwise, orders of a court arising out of a civil proceeding and enforceable in Ontario shall be directed to a sheriff for enforcement.

Police to assist sheriff

(2) A sheriff who believes that the execution of an order may give rise to a breach of the peace may require a police officer to accompany the sheriff and assist in the execution of the order.

Where procedures not provided

**153a.** Jurisdiction conferred on a court, a judge or a justice of the peace shall, in the absence of express provision for procedures for its exercise in any Act, regulation or rule, be exercised in any manner consistent with the due administration of justice. 1984, c. 11, s. 62, *amended*.

**29.** Sections 157 and 158 of the said Act are repealed and the following substituted therefor:

Continuation of proceedings in former courts

**157.** A proceeding pending in a court set out in column 1 of the Table when this section comes into force is continued in the court set out opposite to it in column 2.

TABLE

	<i>Column 1</i>	<i>Column 2</i>
1.	High Court of Justice	Ontario Court (General Division)
2.	District Court	Ontario Court (General Division)
3.	surrogate court	Ontario Court (General Division)
4.	Provincial Court (Criminal Division)	Ontario Court (Provincial Division)
5.	Provincial Court (Family Division)	Ontario Court (Provincial Division)
6.	Provincial Offences Court	Ontario Court (Provincial Division)
7.	Provincial Court (Civil Division)	Small Claims Court

Former Chief Judge, etc.

**158.**—(1) A provincial judge who was a Chief Judge, Associate Chief Judge or senior judge of the Provincial Court (Criminal Division), the Provincial Court (Family Division) or the Provincial Court (Civil Division) immediately before this section comes into force shall continue to hold the office of provincial judge, is entitled to retain the title of Chief Judge, Associate Chief Judge or senior judge, as the case may be, and is entitled to an annual salary equal to the greater of,

- (a) the current annual salary of a provincial judge; or
- (b) the annual salary the judge received immediately before this section comes into force.

(2) A master who was the Senior Master immediately before this section comes into force shall continue to hold the office of master, is entitled to retain the title of Senior Master and is entitled to an annual salary equal to the greater of,

Former  
Senior  
Master

- (a) the current annual salary of a master; or
- (b) the annual salary the master received immediately before this section comes into force.

**158a.**—(1) A document filed in court that refers to a court set out in column 1 of the Table to section 160 is not by that reason invalid and shall be deemed to refer to the court set out opposite to it in column 2.

Documents  
filed

(2) Subsection (1) is repealed one year after this section comes into force.

Subsection  
repealed

**30. Section 159 of the said Act is repealed and the following substituted therefor:**

**159.** Where, by an Act or regulation, jurisdiction is conferred on a particular court set out in column 1 of the Table, the jurisdiction shall be deemed to be conferred on the corresponding court set out in column 2 sitting in the county or district of the court named.

Reference to  
territorial  
jurisdiction

TABLE

<i>Column 1</i>	<i>Column 2</i>
1. county or district court	Ontario Court (General Division)
2. surrogate court	Ontario Court (General Division)
3. provincial court (family division)	Ontario Court (Provincial Division)
4. provincial offences court	Ontario Court (Provincial Division)
5. small claims court	Small Claims Court

**31. Section 160 of the said Act is repealed and the following substituted therefor:**



References to  
courts

**160.** A reference in an Act, rule or regulation to a court set out in column 1 of the Table is deemed to be a reference to the court set out opposite to it in column 2.

TABLE

	<i>Column 1</i>	<i>Column 2</i>
1.	Supreme Court	Ontario Court (General Division)
2.	High Court of Justice	Ontario Court (General Division)
3.	county or district court	Ontario Court (General Division)
4.	District Court	Ontario Court (General Division)
5.	surrogate court	Ontario Court (General Division)
6.	small claims court	Small Claims Court
7.	Provincial Court (Civil Division)	Small Claims Court
8.	provincial court (criminal division)	Ontario Court (Provincial Division)
9.	Provincial Court (Criminal Division)	Ontario Court (Provincial Division)
10.	provincial court (family division)	Ontario Court (Provincial Division)
11.	Provincial Court (Family Division)	Ontario Court (Provincial Division)
12.	provincial offences court	Ontario Court (Provincial Division)
13.	Provincial Offences Court	Ontario Court (Provincial Division)

Changes in  
terminology

**160a.**—(1) A reference in any Act, rule or regulation, or order or other court process, to a term set out in column 1 of the Table, or any form thereof, is deemed to refer to the corresponding term set out opposite thereto in column 2.

TABLE

	<i>Column 1</i>	<i>Column 2</i>
1.	Accountant of the Supreme Court	Accountant of the Ontario Court
2.	administrator <i>ad litem</i>	litigation administrator
3.	certificate of <i>lis pendens</i>	certificate of pending litigation
4.	conduct money	attendance money
5.	guardian <i>ad litem</i>	litigation guardian
6.	judicial district	county or district

7.	local judge of the High Court	judge of the Ontario Court (General Division)
8.	local judge of the Supreme Court	judge of the Ontario Court (General Division)
9.	next friend	litigation guardian
10.	originating motion	application
11.	originating notice	notice of application
12.	praecipe	requisition
13.	provisional judicial district	territorial district
14.	a registrar of a surrogate court	the local registrar of the Ontario Court (General Division)
15.	Rules of Civil Procedure	rules of court
16.	Rules Committee	applicable rules committee
17.	Rules Committee of the Supreme and District Courts	applicable rules committee
18.	Rules of Practice and Procedure of the Supreme Court of Ontario made by the Rules Committee	rules of court
19.	special examiner	official examiner
20.	Surrogate Clerk for Ontario	Estate Registrar for Ontario
21.	taxation of costs	assessment of costs
22.	taxing officer	assessment officer
23.	writ of <i>feri facias</i>	writ of seizure and sale
24.	writ of summons	statement of claim or notice of action

(2) A reference in any Act, rule or regulation to the surrogate registrar for a particular county or district is deemed to be a reference to the local registrar of the Ontario Court (General Division) for that county or district.

*Idem*, surrogate registrar for a county

(3) A reference in any Act, rule or regulation to the clerk of a county or district court of a particular county or district is deemed to be a reference to the local registrar of the Ontario Court (General Division) for that county or district.

*Idem*, clerk of a county

(4) A reference in any Act, rule or regulation to an order, direction or decision filed with the Registrar of the Supreme Court is deemed to be a reference to an order, direction or decision filed with the Ontario Court (General Division).

*Idem*, order filed with the Registrar

**160b.** Where an Act, rule or regulation provides that a document is to be filed with, certified to, forwarded to or transmitted to the Supreme Court or the Registrar of the Supreme Court for the purpose of an appeal to the Divisional

Documents filed for appeal to Divisional Court

Court, that document shall be filed with, certified to, forwarded to or transmitted to, as the case may be, the Divisional Court.

References to  
counties for  
judicial  
purposes

**160c.**—(1) A reference in this Act or any other Act, rule or regulation to a county or district for judicial purposes is deemed to be a reference to the corresponding area that, for municipal or territorial purposes, comprises the county, district, union of counties or regional, district or metropolitan municipality.

Separated  
municipalities

(2) For the purpose of subsection (1), every city, town and other municipality is united to and forms part of the county in which it is situate.

Exceptions

(3) Subsection (1) is subject to the following:

1. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of The Regional Municipality of Haldimand-Norfolk, deemed to be a reference to the following areas:
  - i. All the area of the County of Haldimand as it existed on the 31st day of March, 1974.
  - ii. All the area of the County of Norfolk as it existed on the 31st day of March, 1974.
2. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of The Regional Municipality of Niagara, deemed to be a reference to the following areas:
  - i. All the area of the County of Lincoln as it existed on the 31st day of December, 1969.
  - ii. All the area of the County of Welland as it existed on the 31st day of December, 1969.
3. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of The Regional Municipality of Sudbury and the Territorial District of Sudbury, deemed to be a reference to all the area in The Regional Municipality of Sudbury and in the Territorial District of Sudbury.
4. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of an area described below, deemed to be a reference to all the area in the areas described below:



- i. All the area in the County of Victoria.
- ii. All the area in the County of Haliburton.
- iii. All the area in any part of the townships of Sherborne, McClintock, Livingstone, Lawrence and Nightingale located in Algonquin Park, so long as the part remains part of Algonquin Park.

**32.** Section 212 of the said Act is repealed.

**33.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

**34.** The short title of this Act is the *Courts of Justice Amendment Act, 1989*. Short title



## CHAPTER 56

### **An Act to amend certain Statutes of Ontario Consequent upon Amendments to the Courts of Justice Act, 1984**

*Assented to November 15th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—**(1) Subsection 23 (8) of the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, is amended by striking out “\$200 or less” in the third line and inserting in lieu thereof “within the monetary jurisdiction of the Small Claims Court”.

(2) Subsection 29 (3) of the said Act is amended by striking out “the judge of the surrogate court of the Judicial District of York” in the fourth and fifth lines and inserting in lieu thereof “a judge of the Ontario Court (General Division) sitting in The Municipality of Metropolitan Toronto”.

**2.** Subsection 63 (1) of the *Child and Family Services Act*, 1984, being chapter 55, is repealed and the following substituted therefor:

(1) The Minister may appoint a judge of the Ontario Court of Justice or the Unified Family Court to investigate a matter relating to a child in a society’s care or the proper administration of this Part, and a judge who is appointed shall conduct the investigation and make a written report to the Minister.

Investigation  
by judge

**3.—**(1) Section 3 of the *Children’s Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, is amended by striking out “the Judicial District” in the second and third lines and inserting in lieu thereof “The Regional Municipality”.

(2) Section 73 of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:



Order made  
under  
R.S.O. 1980,  
c. 292

**73.—**(1) An application to vary an order made by a surrogate court under the *Minors Act* shall be made to the Ontario Court (General Division).

Idem  
1984, c. 11

(2) Section 160 of the *Courts of Justice Act, 1984* does not apply to subsection (1) to deem the reference to a surrogate court to be a reference to the Ontario Court (General Division).

**4.—**(1) Section 51 of the *Construction Lien Act, 1983*, being chapter 6, as amended by the Statutes of Ontario, 1984, chapter 11, section 165, is repealed.

(2) Section 52 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 165, is repealed.

(3) Section 53 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 165, is repealed and the following substituted therefor:

Court to  
dispose  
completely of  
action

**53.** The court, whether the action is being tried by a judge or by a master on a reference,

- (a) shall try the action, including any set-off, cross-claim, counterclaim and, subject to section 58, third party claim, and all questions that arise therein or that are necessary to be tried in order to dispose completely of the action and to adjust the rights and liabilities of the persons appearing before it or upon whom notice of trial has been served; and
- (b) shall take all accounts, make all inquiries, give all directions and do all things necessary to dispose finally of the action and all matters, questions and accounts arising therein or at the trial and to adjust the rights and liabilities of, and give all necessary relief to, all parties to the action.

(4) Section 54 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 165, is repealed and the following substituted therefor:

Where  
exclusive  
jurisdiction  
not acquired

**54.** A judge or master does not acquire exclusive jurisdiction over the trial of an action or reference by reason only of appointing the time and place for the trial of the action or reference, or for holding a settlement meeting.

(5) Subsection 60 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 165, is repealed and the following substituted therefor:

(1) On motion made after the delivery of all statements of defence, or the statements of defence to all crossclaims, counterclaims or third party claims, if any, or the time for their delivery has expired, a judge may refer the whole action for trial to a master assigned to the county or district in which the premises or part of the premises are situate. Reference to master

(1a) A master shall not hear or dispose of a motion made under subsection (1). Idem

**(6) Subsection 60 (2) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 165, is repealed and the following substituted therefor:**

(2) At the trial, a judge may direct a reference to a master assigned to the county or district in which the premises or part of the premises are situate. Idem

(2a) A master to whom a reference has been directed has all the jurisdiction, powers and authority of the court to try and completely dispose of the action and all matters and questions arising in connection with the action, including the giving of leave to amend any pleading and the giving of directions to a receiver or trustee appointed by the court. Powers of master on reference

**(7) Subsection 60 (3) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 165, is repealed and the following substituted therefor:**

(3) Where under subsection (1) the action has been referred to a master for trial, any person who subsequently becomes a party to the action may, within seven days after becoming a party to the action, make a motion to a judge of the court that directed the reference to set aside the judgment directing the reference. Application to set aside order of reference

**(8) Clause 64 (1) (b) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 165, is repealed and the following substituted therefor:**

(b) in a report in the prescribed form, where the trial is conducted by a master on a reference.

**(9) Subsection 64 (3) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 165, is repealed and the following substituted therefor:**

(3) The report of a master shall be deemed to be confirmed at the expiration of the fifteen-day period next following the date that the notice of filing was given, unless notice of a When report deemed confirmed

motion to oppose confirmation of the report is served within that time.

**5.—(1)** Subsection 48 (3) of the *Conveyancing and Law of Property Act*, being chapter 90 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 64, section 6, is further amended by striking out “the office of the Registrar of the Supreme Court at Osgoode Hall” in the fifth and sixth lines and inserting in lieu thereof “an office of the Ontario Court (General Division)”.

(2) Section 49 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 6, is further amended by striking out “the office of the Registrar of the Supreme Court at Osgoode Hall” in the thirteenth and fourteenth lines and inserting in lieu thereof “an office of the Ontario Court (General Division)”.

**6.** Subsection 6 (1) of the *Coroners Act*, being chapter 93 of the Revised Statutes of Ontario, 1980, is amended by striking out “the Chief Judge of the County and District Courts” in the second line and inserting in lieu thereof “a judge of the Ontario Court (General Division) designated by the Chief Justice of the Ontario Court”.

**7.—(1)** Subsection 78 (2) of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, is amended by striking out “Registrar of the Supreme Court or the local registrar of the Supreme Court” in the fourth and fifth lines and inserting in lieu thereof “local registrar of the Ontario Court (General Division)”.

(2) Subsection 80 (1) of the said Act is amended by striking out “Registrar of the Supreme Court or the local registrar of the Supreme Court” in the second and third lines and inserting in lieu thereof “local registrar of the Ontario Court (General Division)”.

**8.—(1)** Clause 3 (2) (a) of the *County of Haliburton Act*, 1982, being chapter 57, is repealed.

(2) Subsection 4 (4) of the said Act is repealed.

**9.—(1)** Section 3 of the *Creditors' Relief Act*, being chapter 103 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1985, chapter 1, section 1, is amended by adding thereto the following subsection:



(2) Subsection (1) does not affect the priority of a creditor by execution or garnishment issued by the Small Claims Court. Exception

(2) Subsection 22 (2) of the said Act is repealed and the following substituted therefor:

(2) Such costs shall be ascertained in accordance with the tariffs of costs under the rules of court applicable to, Scale of costs

(a) the Small Claims Court, if the claim is within the monetary jurisdiction of that court; or

(b) the Ontario Court (General Division), in any other case.

**10.**—(1) Subsection 3 (1) of the *Crown Attorneys Act*, being chapter 107 of the Revised Statutes of Ontario, 1980, is amended by striking out “the Judicial District of York” in the third and fourth lines and in the sixth line and inserting in lieu thereof in each instance “The Municipality of Metropolitan Toronto”.

(2) Subsection 3 (2) of the said Act is amended by striking out “the Judicial District of York” wherever it occurs and inserting in lieu thereof in each instance “The Municipality of Metropolitan Toronto”.

(3) Subclause 12 (b) (ii) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 11, section 170, is repealed.

**11.**—(1) Subsection 4 (3) of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Subsection 112 (1) of the said Act is amended by striking out “district court within the District Area or a judge of the county court or district court of a county or district adjoining the District Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**12.**—(1) Section 69 of the *Election Act, 1984*, being chapter 54, is repealed and the following substituted therefor:

**69.** In this section and in sections 70 to 80, unless otherwise stated, “judge” means a judge of the Ontario Court (Provincial Division). Definition

(2) Subsection 70 (2) of the said Act is amended by striking out “the clerk of the county or district court” in the third line

and inserting in lieu thereof “a clerk of the Ontario Court (Provincial Division) of the county or district in which the electoral district or any part of it is situate”.

(3) Subsection 72 (2) of the said Act is amended by striking out “of the county or district court” in the first and second lines.

(4) Section 78 of the said Act is amended by striking out “court of the county or judicial district” in the fourth and fifth lines and inserting in lieu thereof “Ontario Court (Provincial Division)”.

(5) Subsection 79 (3) of the said Act is amended by striking out “Registrar of the Supreme Court” in the fifth and sixth lines and inserting in lieu thereof “local registrar of the Ontario Court (General Division) of the county or district in which the electoral district or any part of it is situate” and by striking out “Registrar” in the eighth line and inserting in lieu thereof “local registrar”.

(6) Subsections 79 (4) and (5) of the said Act are amended by striking out “Registrar” wherever it occurs and inserting in lieu thereof in each instance “local registrar”.

(7) Subsection 85 (5) of the said Act is amended by striking out “Registrar of the Supreme Court” in the second and third lines and inserting in lieu thereof “local registrar of the Ontario Court (General Division) of the county or district in which the electoral district or any part of it is situate” and by striking out “Registrar” in the fourth line and inserting in lieu thereof “local registrar”.

(8) Subsections 98 (5) and (6) of the said Act are repealed and the following substituted therefor:

Local  
registrar to  
notify  
C.E.O.

(5) When an action is commenced by a person other than the Chief Election Officer, the local registrar of the Ontario Court (General Division) shall notify the Chief Election Officer by registered mail.

(9) Subsection 103 (3) of the said Act is amended by striking out “Registrar of the Supreme Court” in the second line and inserting in lieu thereof “local registrar of the Ontario Court (General Division)”.

(10) Subsection 105 (1) of the said Act is amended by striking out “Registrar of the Supreme Court” in the sixth and seventh lines and inserting in lieu thereof “local registrar of the Ontario Court (General Division)”.




(11) Subsection 106 (7) of the said Act is amended by striking out "Registrar of the Supreme Court" in the first line and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

(12) Subsection 107 (2) of the said Act is amended by striking out "Registrar" in the second line and inserting in lieu thereof "local registrar".

(13) Subsection 109 (2) of the said Act is repealed and the following substituted therefor:

(2) The appeal shall be heard as speedily as practicable.

Appeal to be  
heard  
speedily

 13. Section 49 of the *Evidence Act*, being chapter 145 of the Revised Statutes of Ontario, 1980, is amended by striking out "surrogate court granting the same, or under the seal of the Supreme Court, where the probate or letters of administration were granted by the former court of probate for Upper Canada" in the fifth, sixth, seventh and eighth lines and inserting in lieu thereof "court that granted it or under the seal of the Ontario Court (General Division)".

14. Subsections 24 (2) and (3) of the *Fraudulent Debtors Arrest Act*, being chapter 177 of the Revised Statutes of Ontario, 1980, are repealed.

15.—(1) Subsection 14 (6) of the *Fuel Tax Act, 1981*, being chapter 59, is amended by striking out "Registrar of the Supreme Court or the local registrar of the Supreme Court" in the third and fourth lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

(2) Subsection 14 (10) of the said Act is amended by striking out "Registrar of the Supreme Court or the local registrar of the Supreme Court" in the second and third lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

16. Subsection 14 (2) of the *Gasoline Tax Act*, being chapter 186 of the Revised Statutes of Ontario, 1980, is amended by striking out "Registrar of the Supreme Court or with the local registrar of the Supreme Court" in the fourth and fifth lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

17.—(1) Clause 20 (3) (a) of the *Income Tax Act*, being chapter 213 of the Revised Statutes of Ontario, 1980, is amended by striking out "Registrar of the Supreme Court or the local registrar of the court" in the fifth, sixth and seventh



lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

(2) Subsection 21 (3) of the said Act is amended by striking out "Registrar of the Supreme Court or the local registrar of the court" in the fourth and fifth lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

(3) Subsection 21 (6) of the said Act is amended by striking out "Registrar of the Supreme Court or the local registrar of the court, as the case may be" in the first, second and third lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

18. Subsection 19 (2) of the *Industrial Standards Act*, being chapter 216 of the Revised Statutes of Ontario, 1980, is amended by striking out "\$1,000" in the fifth line and inserting in lieu thereof "the monetary jurisdiction of the Small Claims Court".

19. Section 61 of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, is amended by striking out "the Master of the Supreme Court" in the fourth line and inserting in lieu thereof "a referee in a proceeding in the Ontario Court (General Division)".

20.—(1) Clause 27 (i) of the *Interpretation Act*, being chapter 219 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

idem

- (i) where the time limited for a proceeding or for the doing of any thing in a court office, a land registry office or a sheriff's office expires or falls on a day that is prescribed as a holiday for that office, the time so limited extends to and the thing may be done on the day next following that is not a holiday.

(2) Paragraphs 9 and 35 of section 30 of the said Act are repealed.

21.—(1) Subsection 5 (3) of the *Juries Act*, being chapter 226 of the Revised Statutes of Ontario, 1980, is amended by adding "and" at the end of clause (a) and by striking out clauses (b) and (c) and inserting in lieu thereof:

- (b) to the local registrar of the Ontario Court (General Division), a copy of the determination for the number of jurors under clause (1) (a).

(2) Subsection 12 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 189, is repealed and the following substituted therefor:

(1) A judge of the Ontario Court (General Division) may issue precepts in the form prescribed by the regulations to the sheriff for the return of such number of jurors as the sheriff has determined as the number to be drafted and returned or such greater or lesser number as in his or her opinion is required.

Issuance of precepts

(3) Subsection 12 (1a) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 11, section 189, is repealed.

(4) Subsection 12 (2) of the said Act is repealed.

(5) Subsection 39 (2) of the said Act is amended by striking out "Registrar or the local registrar of the Supreme Court, as the case may be" in the third and fourth lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

**22.—**(1) Clauses 9 (1) (a), (b) and (c) of the *Justices of the Peace Act, 1989*, being chapter 46, are repealed and the following substituted therefor:

- (a) the Chief Judge of the Ontario Court (Provincial Division) who shall preside over the Review Council;
- (b) the Co-ordinator;
- (c) the regional senior judge of the Ontario Court (Provincial Division) in the region in which the matter being considered by the Council arises.

. . . . .

- a) le juge en chef de la Cour de l'Ontario (Division provinciale), qui préside le Conseil;
- b) le coordonnateur;
- c) le juge principal régional de la Cour de l'Ontario (Division provinciale) de la région où se présente l'affaire dont traite le Conseil.

(2) Subsection 14 (1) of the said Act is repealed and the following substituted therefor:

Co-ordinator  
to supervise  
justices,  
assign duties

(1) The Co-ordinator has general supervision and direction over sittings of justices of the peace and the assignment of their duties, subject to the direction of the Chief Judge of the Ontario Court (Provincial Division).

Surveillance,  
etc., par le  
coordon-  
nateur

(1) Le coordonnateur est chargé de l'administration et de la surveillance des sessions des juges de paix et de l'assignation de leurs fonctions, sous réserve de la direction du juge en chef de la Cour de l'Ontario (Division provinciale).

(3) Subsection 14 (6) of the said Act is amended by striking out "a" in the fourth line of the English version and inserting in lieu thereof "the" and by striking out "d'un" in the fifth line of the French version and inserting in lieu thereof "du".

**23.** Subsection 12 (2) of the *Land Transfer Tax Act*, being chapter 231 of the Revised Statutes of Ontario, 1980, is amended by striking out "Registrar of the Supreme Court or with the Local Registrar of the Supreme Court" in the fourth and fifth lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

**24.—**(1) Sections 69 and 70 of the *Landlord and Tenant Act*, being chapter 232 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Section 74 of the said Act is repealed and the following substituted therefor:

Scale of costs

**74.** The costs of the proceeding before the judge shall be on the Small Claims Court scale if the amount claimed by the landlord does not exceed the monetary jurisdiction of the Small Claims Court.

**25.** Section 49 of the *Law Society Act*, being chapter 233 of the Revised Statutes of Ontario, 1980, is amended by striking out "Registrar of the Supreme Court" in the fourth line and inserting in lieu thereof "local registrar of the Ontario Court (General Division) at Toronto".

**26.—**(1) Subsection 17 (3) of the *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Transmission  
of copy of  
disclaimer

(3) The Clerk of the Assembly shall, on receiving a disclaimer, forthwith send a copy of it to the local registrar of the Ontario Court (General Division) for the county or district in



which is situate the electoral district or any part of the electoral district for which the member so disclaiming was elected.

(2) Subsection 47 (2) of the said Act is amended by striking out "the Judicial District of York" in the second and third lines and inserting in lieu thereof "The Municipality of Metropolitan Toronto".

27. Subsection 13 (4) of the *Libel and Slander Act*, being chapter 237 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(4) An order made under this section is final and is not subject to appeal.

Order of  
judge  
respecting  
security final

28.—(1) Subsection 10 (1) of the *Master and Servant Act*, being chapter 257 of the Revised Statutes of Ontario, 1980, is amended by striking out "small claims court of the division in which the cause of action arose or in which the party or parties complained against, or one of them, resided at the time of the making of the complaint, or to the small claims court held in the division in which the party or parties complained against or one of them carried on business" in the fourth, fifth, sixth, seventh, eighth and ninth lines and inserting in lieu thereof "Ontario Court (General Division)".

(2) Section 11 of the said Act is repealed.

29. Subsection 102 (1) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by striking out "county or district court of the county or district in which the municipality is situate, or a judge of the county or district court of a county or district adjoining the county or district in which the municipality is situate" in the second, third, fourth, fifth and sixth lines and inserting in lieu thereof "Ontario Court (General Division)".

30.—(1) Subsection 87 (1) of the *Municipal Elections Act*, being chapter 308 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1988, chapter 33, section 9, is amended by striking out "District Court of" in the ninth line and inserting in lieu thereof "Ontario Court (Provincial Division) sitting in".

(2) Subsection 87 (4) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 33, section 9, is amended by striking out "the local registrar of the District Court" in the third line and inserting in lieu thereof "a clerk of the Ontario Court (Provincial Division) of the county or district in which the electoral district or any part of it is situate".

(3) Subsection 88c (1) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 33, section 9, is amended by striking out “District Court” in the fourth line and inserting in lieu thereof “Ontario Court (Provincial Division)”.

(4) Subsection 88c (2) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 33, section 9, is amended by striking out “District Court” in the fourth line and inserting in lieu thereof “Ontario Court (Provincial Division)”.

(5) Section 88j of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 33, section 9, is repealed and the following substituted therefor:

Appeal from  
decision of  
provincial  
judge or  
recount  
officer

**88j.**—(1) Any party may appeal to the Ontario Court (General Division) from the decision of the provincial judge on the application or of the recount officer on the recount, as the case may be, by giving written notice not more than five days following the completion of the hearing or the recount to the other parties concerned and to the provincial judge or the recount officer and the notice may limit the appeal to specified disputed ballots.

Service of  
notice

(2) The notice shall be served upon the other parties personally or upon the solicitor who acted for the party or in the manner that a judge of the Ontario Court (General Division) may direct.

Documents  
to be  
forwarded

(3) The provincial judge or recount officer shall forward to the local registrar of the Ontario Court (General Division) by registered mail,

- (a) the notice of appeal;
- (b) a certificate showing the findings of the provincial judge or recount officer on the ballots or statements in dispute;
- (c) if the appeal is limited to specified disputed ballots, the ballots or statements of the vote that are the subject of the appeal in the envelopes described in subsection 88c (7) and section 88d; and
- (d) if the appeal is not limited, all of the ballots in the envelopes referred to in clause 88c (8) (b) or 88e (1) (b).

Certificate to  
be issued  
after appeal

(4) The provincial judge or recount officer shall await the result of the appeal before preparing the certificate under subsection 88c (8) or 88e (2).



(5) The provincial judge or recount officer shall, upon request, allow each party to make a copy of the order or certificate, as the case may be, before it is forwarded to the local registrar.

Copy of  
certificate

(6) On receipt of the ballots, notice and statement, the local registrar shall immediately fix a time for hearing the appeal and shall notify the parties or their solicitors of the time so fixed.

Appointment  
for hearing

(7) One judge of the Ontario Court (General Division) shall determine the objection pertaining to, or count again, the ballots or such of them as are the subject of appeal, or review the re-addition, as the case may be, and shall immediately certify in writing the decision of the court to the provincial judge or to the recount officer.

Determi-  
nation by  
General  
Division

(8) The provincial judge or recount officer, in compliance with the decision of the Ontario Court (General Division), shall certify the result without delay.

Certificate to  
reflect  
decision

**31.** Subsection 252 (1) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is amended by striking out "county court of the Judicial District of York, or a judge of the county court of a judicial district adjoining the Judicial District of York" in the second, third and fourth lines and inserting in lieu thereof "Ontario Court (General Division)".

**32.** Subsection 121 (1) of the *County of Oxford Act*, being chapter 365 of the Revised Statutes of Ontario, 1980, is amended by striking out "county court within the County or a judge of the county court of a county or judicial district adjoining the County" in the second, third and fourth lines and inserting in lieu thereof "Ontario Court (General Division)".

**33.—**(1) Subsection 11 (9) of the *Provincial Land Tax Act*, being chapter 399 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1982, chapter 18, section 7, is amended by striking out "Registrar of the Supreme Court of Ontario or the local registrar of the Supreme Court" in the fourth, fifth and sixth lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

(2) Subsection 11 (11) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 18, section 7, is amended by striking out "Registrar of the Supreme Court or the local registrar of the Supreme Court" in the first and second lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".



**34.—(1) Clause 1 (1) (j) of the *Provincial Offences Act*, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by striking out “court” in the first line and inserting in lieu thereof “Chief Judge of the Ontario Court (Provincial Division)”.**

(2) Subsection 31 (2) of the said Act is amended by striking out “chief judge of the provincial offences courts” in the third and fourth lines and inserting in lieu thereof “Chief Judge of the Ontario Court (Provincial Division)”.

(3) Subsection 31 (3) of the said Act is amended by striking out “chief judge of the provincial offences courts” in the fourth and fifth lines and inserting in lieu thereof “Chief Judge of the Ontario Court (Provincial Division)”.

(4) The said Act is amended by adding thereto the following section:

Contempt

**90a.—(1)** Except as otherwise provided by an Act, every person who commits contempt in the face of a justice of the peace presiding over the Ontario Court (Provincial Division) in a proceeding under this Act is on conviction liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

Statement to  
offender

(2) Before a proceeding is taken for contempt under subsection (1), the justice of the peace shall inform the offender of the conduct complained of and the nature of the contempt and inform him or her of the right to show cause why he or she should not be punished.

Show cause

(3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he or she should not be punished.

Adjournment  
for adjudication

(4) Except where, in the opinion of the justice of the peace, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the justice of the peace shall adjourn the contempt proceeding to another day.

Adjudication  
by judge

(5) A contempt proceeding that is adjourned to another day under subsection (4) shall be heard and determined by the court presided over by a provincial judge.

Arrest for  
immediate  
adjudication

(6) Where the justice of the peace proceeds to deal with a contempt immediately and without adjournment under subsection (4), the justice of the peace may order the offender

arrested and detained in the courtroom for the purpose of the hearing and determination.

(7) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in Ontario, the court may order that he or she be barred from acting as agent in the proceeding in addition to any other punishment to which he or she is liable.

Barring agent  
in contempt

(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in a proceeding commenced by certificate under Part I of this Act.

Appeals

(9) This Act applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section.

Enforcement

(5) Section 91m of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 80, section 1, is amended by striking out "provincial court (criminal division)" in the sixth line and inserting in lieu thereof "Ontario Court (Provincial Division) presided over by a provincial judge".

(6) Clause 99 (2) (a) of the said Act is amended by striking out "provincial court (criminal division) of" in the second and third lines and inserting in lieu thereof "Ontario Court (Provincial Division) presided over by a provincial judge sitting in".

(7) Subsection 118 (1) of the said Act is amended by striking out "provincial court (criminal division) of" in the fifth line and inserting in lieu thereof "Ontario Court (Provincial Division) presided over by a provincial judge sitting in".

(8) Subsection 122 (1) of the said Act is repealed and the following substituted therefor:

(1) An appeal lies from the judgment of the Ontario Court (Provincial Division) in an appeal under section 118 to the Court of Appeal, with leave of a justice of appeal, on special grounds, upon any question of law alone.

Appeal to  
Court of  
Appeal

(9) Section 123 of the said Act is repealed.

(10) Subsection 142 (1) of the said Act is amended by striking out "in the county or district in which the provincial offences court having jurisdiction in respect of the offence is situated" in the thirteenth, fourteenth and fifteenth lines.



**35.—**(1) Subsections 5 (3) and (4) of the *Regional Municipality of Durham Act*, being chapter 434 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 133 (1) of the said Act is amended by striking out “county court within the Regional Area or a judge of the county court of a county or judicial district adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**36.—**(1) Subsections 5 (3), (4) and (6) of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 116 (1) of the said Act is amended by striking out “county court within the Regional Area or a judge of the county court of a county or judicial district adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**37.—**(1) Subsections 5 (3) and (5) of the *Regional Municipality of Halton Act*, being chapter 436 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 126 (1) of the said Act is amended by striking out “county court within the Regional Area or a judge of the county court of a county or judicial district adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**38.—**(1) Subsections 4 (3) and (5) of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 138 (1) of the said Act is amended by striking out “county court within the Regional Area or a judge of the county court of a county or judicial district adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**39.—**(1) Subsections 4 (3) and (4) of the *Regional Municipality of Niagara Act*, being chapter 438 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 165 (1) of the said Act is amended by striking out “either of the county courts within the Regional Area or a judge of the county court of a county adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “the Ontario Court (General Division)”.



**40.**—(1) Subsection 2 (3) of the *Regional Municipality of Ottawa-Carleton Act*, being chapter 439 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Subsection 168 (1) of the said Act is amended by striking out “county court of the Regional Area or a judge of the county court of a county adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**41.**—(1) Subsections 5 (3) and (5) of the *Regional Municipality of Peel Act*, being chapter 440 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 121 (1) of the said Act is amended by striking out “county court within the Regional Area or a judge of the county court of a county or judicial district adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**42.**—(1) Subsection 4 (3) of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Subsection 108 (1) of the said Act is amended by striking out “district court within the Regional Area or a judge of the district court of a district adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**43.**—(1) Subsections 4 (3) and (5) of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 156 (1) of the said Act is amended by striking out “county court within the Regional Area or a judge of the county court of a county adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**44.**—(1) Subsection 4 (3) of the *Regional Municipality of York Act*, being chapter 443 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Subsection 157 (1) of the said Act is amended by striking out “county court within the Regional Area or a judge of the county court of a county or judicial district adjoining the Regional Area” in the second, third and fourth lines and inserting in lieu thereof “Ontario Court (General Division)”.

**45.—**(1) Subsection 23 (2) of the *Retail Sales Tax Act*, being chapter 454 of the Revised Statutes of Ontario, 1980, is amended by striking out “Registrar of the Supreme Court or the local registrar of the Supreme Court” in the fourth and fifth lines and inserting in lieu thereof “local registrar of the Ontario Court (General Division)”.

(2) Subsection 25 (1) of the said Act is amended by striking out “Registrar of the Supreme Court or the local registrar of the Supreme Court” in the second and third lines and inserting in lieu thereof “local registrar of the Ontario Court (General Division)”.

**46.** The *Sheriffs Act*, being chapter 470 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 11, section 212 and 1989, chapter 24, section 2, is repealed.

**47.** Subsection 35 (1) of the *Statute Labour Act*, being chapter 482 of the Revised Statutes of Ontario, 1980, is amended by striking out “Provisional Judicial” in the fifteenth line and inserting in lieu thereof “Territorial”.

**48.—**(1) Sections 2, 4 and 5 of the *Surrogate Courts Act*, being chapter 491 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Sections 6 and 7 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 215, are repealed.

(3) Sections 8 and 9 of the said Act are repealed.

(4) Section 11 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 10, section 1, is repealed.

(5) Section 12 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 11, section 215, is repealed.

(6) Sections 14 and 15 of the said Act are repealed.

(7) Section 17 of the said Act is repealed and the following substituted therefor:

**17.** The office of the local registrar of the Ontario Court (General Division) is a depository for all wills of living persons given there for safekeeping, and the local registrar shall receive and keep those wills under such regulations as are prescribed by the rules of court.

(8) Section 18 of the said Act is amended by striking out "regulations as are prescribed by the surrogate court rules" in the fourth and fifth lines and inserting in lieu thereof "conditions as are prescribed by the rules of court".

(9) Sections 21, 22 and 23 of the said Act are repealed.

(10) Section 26 of the said Act is repealed and the following substituted therefor:

**26.—**(1) An application for a grant of probate or letters of administration shall be made to the Ontario Court (General Division) and shall be filed in the office for the county or district in which the testator or intestate had at the time of death a fixed place of abode.

Grant of probate or administration, jurisdiction

(2) If the testator or intestate had no fixed place of abode in Ontario or resided out of Ontario at the time of death, the application shall be filed in the office for the county or district in which the testator or intestate had property at the time of death.

Where decedent had no abode in Ontario

(3) In other cases the application for probate or letters of administration may be filed in any office.

When application may be filed in any office

(11) Sections 27, 28 and 29 of the said Act are repealed.

(12) Subsection 30 (1) of the said Act is repealed and the following substituted therefor:

(1) The court may cause any question of fact arising in any proceeding to be tried by a jury.

Trial of questions of fact by a jury

(13) Section 32 of the said Act is repealed.

(14) Subsection 33 (1) of the said Act is repealed and the following substituted therefor:

(1) Any party or person taking part in a proceeding under this Act may appeal to the Divisional Court from an order, determination or judgment of the Ontario Court (General Division) if the value of the property affected by such order, determination or judgment exceeds \$200.

Right of appeal

(15) Subsections 33 (4), (5) and (6) of the said Act are repealed.

(16) Section 34 of the said Act is repealed.



(17) Section 44 of the said Act is amended by striking out “surrogate court” in the sixth line and inserting in lieu thereof “office of the Ontario Court (General Division)”.

(18) Section 45 of the said Act is repealed and the following substituted therefor:

Where  
application  
filed in more  
than one  
office

**45.** If it appears by the certificate of the Estate Registrar for Ontario that application for probate or administration has been filed in two or more court offices, the proceedings shall be stayed until, on motion, a judge of the Ontario Court (General Division) determines where the application will proceed.

(19) Section 60 of the said Act is amended by striking out “judge of the court for the time being, or in case of the separation of counties, to enure for the benefit of any judge of a surrogate court to be named by the Supreme Court for that purpose” in the fifth, sixth, seventh and eighth lines and inserting in lieu thereof “Accountant of the Ontario Court”.

(20) Subsection 74 (1) of the said Act is repealed.

(21) Subsection 74 (3) of the said Act is repealed and the following substituted therefor:

Powers of  
judge on  
passing  
accounts

(3) The judge, on passing the accounts of an executor, administrator or trustee under a will of which the trustee is an executor, has jurisdiction to enter into and make full inquiry and accounting of and concerning the whole property that the deceased was possessed of or entitled to, and its administration and disbursement.

(22) Subsection 74 (6) of the said Act is repealed.

(23) Section 78 of the said Act is repealed.

(24) Section 80 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 11, section 215, is repealed.

(25) The title to the *Surrogate Courts Act* is repealed and the following substituted therefor:

#### ESTATES ACT

**49.—**(1) Section 1 of the *Territorial Division Act*, being chapter 497 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 57, section 4, is further amended by striking out “5, 5a, 6, 7 and 8 for municipal and judicial purposes such counties, and for judicial

purposes such districts and metropolitan and regional areas, are respectively” in the third, fourth, fifth and sixth lines and inserting in lieu thereof “and 5, for municipal purposes such counties are”.

(2) Paragraph 2 of section 1 of the said Act is amended by striking out the following sentences at the end thereof:

“The Indian Reserve at Cape Croker shall, for judicial purposes, be deemed part of the Township of Albemarle.

“The Indian Reserve at Chief’s Point and the Saugeen Indian Reserve north of the mouth of the Saugeen River shall, for judicial purposes, be deemed part of the Township of Amabel”.

(3) Paragraph 42 of the said section 1 is amended by striking out “The Territorial District of Algoma forms the Provisional Judicial District of Algoma” in the seventh and eighth lines from the end thereof.

(4) Paragraph 43 of the said section 1 is amended by striking out “The Territorial District of Cochrane forms the Provisional Judicial District of Cochrane” at the end thereof.

(5) Paragraph 44 of the said section 1 is amended by striking out “The Territorial District of Kenora forms the Provisional Judicial District of Kenora” at the end thereof.

(6) Paragraph 45 of the said section 1 is amended by striking out “The Territorial District of Manitoulin forms the Provisional Judicial District of Manitoulin” at the end thereof.

(7) Paragraph 46 of the said section 1 is amended by striking out “The District Municipality of Muskoka forms the Provisional Judicial District of Muskoka” at the end thereof.

(8) Paragraph 47 of the said section 1 is amended by striking out “The Territorial District of Nipissing forms the Provisional Judicial District of Nipissing” at the end thereof.

(9) Paragraph 48 of the said section 1 is amended by striking out “The Territorial District of Parry Sound forms the Provisional Judicial District of Parry Sound” at the end thereof.

(10) Paragraph 49 of the said section 1 is amended by striking out “The Territorial District of Rainy River forms the Provisional Judicial District of Rainy River” at the end thereof.

(11) Paragraph 50 of the said section 1, as amended by the Statutes of Ontario, 1986, chapter 52, section 1, is further amended by striking out "The Territorial District of Sudbury forms the Provisional Judicial District of Sudbury" at the end thereof.

(12) Paragraph 51 of the said section 1 is amended by striking out "The Territorial District of Thunder Bay forms the Provisional Judicial District of Thunder Bay" at the end thereof.

(13) Paragraph 52 of the said section 1 is amended by striking out "The Territorial District of Timiskaming forms the Provisional Judicial District of Timiskaming" at the end thereof.

(14) Subsection 4 (1) of the said Act is amended by striking out "judicial" in the first line.

(15) Subsection 4 (2) of the said Act is amended by striking out "courts" in the fourth line.

(16) Section 5 of the said Act is repealed and the following substituted therefor:

Cities and  
towns

5. For municipal purposes, cities, towns and other municipalities withdrawn from the jurisdiction of a county do not form part of the counties in which they are respectively situate.

(17) Section 5a of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 57, section 4, is repealed.

(18) Sections 6, 7 and 8 of the said Act are repealed.

(19) Clause 15 (b) of the said Act is amended by striking out "or provisional judicial district" in the first and second lines.

50. Subsection 13 (2) of the *Tobacco Tax Act*, being chapter 502 of the Revised Statutes of Ontario, 1980, is amended by striking out "Registrar of the Supreme Court or with the local registrar of the Supreme Court" in the fourth and fifth lines and inserting in lieu thereof "local registrar of the Ontario Court (General Division)".

51. Subsection 27 (1) of the *Vital Statistics Act*, being chapter 524 of the Revised Statutes of Ontario, 1980, is amended by striking out "The Registrar of the Supreme Court and every local registrar of the Supreme Court" in the first and second



lines and inserting in lieu thereof "Every local registrar of the Ontario Court (General Division)".

**52.**—(1) Subsection 10 (1) of the *Woodmen's Lien for Wages Act*, being chapter 537 of the Revised Statutes of Ontario, 1980, is amended by striking out "\$1,000" in the third line and in the sixth line and inserting in lieu thereof in each instance "the monetary jurisdiction of the Small Claims Court".

(2) Section 16 of the said Act is amended by striking out "\$1,000" in the first line and inserting in lieu thereof "the monetary jurisdiction of the Small Claims Court".

(3) Subsection 17 (1) of the said Act is amended by striking out "\$1,000" in the first line and inserting in lieu thereof "the monetary jurisdiction of the Small Claims Court".

**53.** Section 116 of the *Workers' Compensation Act*, being chapter 539 of the Revised Statutes of Ontario, 1980, is amended by striking out "\$1,000" in the ninth line and inserting in lieu thereof "the monetary jurisdiction of the Small Claims Court".

**54.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

**55.** The short title of this Act is the *Court Reform Statute Law Amendment Act, 1989*. Short title



## CHAPTER 57

### **An Act to amend the Ontario Municipal Improvement Corporation Act**

*Assented to November 23rd, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 4 (1) of the *Ontario Municipal Improvement Corporation Act*, being chapter 349 of the Revised Statutes of Ontario, 1980, is amended by striking out “and to section 14” in the second line.

**2.** Section 14 of the said Act is repealed.

**3.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**4.** The short title of this Act is the *Ontario Municipal Improvement Corporation Amendment Act, 1989*. Short title





## CHAPTER 58

### An Act to provide for the Payment of Development Charges

*Assented to November 23rd, 1989*

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

**1. In this Act,**

“area municipality” means,

- (a) a town, other than a separated town, township or village in a county, and
- (b) a city, town, village or township in a regional, metropolitan or district municipality;

“benefiting area” means an area defined by a map, plan or legal description in a front-ending agreement as an area that will receive a benefit from the construction of a service;

“capital cost” means costs incurred or proposed to be incurred by a municipality or a local board thereof directly or under an agreement,

- (a) to acquire land or an interest in land,
- (b) to improve land,
- (c) to acquire, construct or improve buildings and structures,
- (d) to acquire, construct or improve facilities including,
  - (i) rolling stock, furniture and equipment, and
  - (ii) materials acquired for circulation, reference or information purposes by a library board as defined in the *Public Libraries Act, 1984*, and
- (e) to undertake studies in connection with any of the matters in clauses (a) to (d),

required for the provision of services designated in a development charge by-law within or outside the municipality, including interest on borrowing for those expenditures under clauses (a), (b), (c) and (d) that are growth-related;

“development” includes redevelopment;



“development charge” means a charge imposed with respect to growth-related net capital costs against land under a by-law passed under section 3;

“development charge by-law” means a by-law passed under section 3;

“front-end payment” means a payment made by an owner pursuant to a front-ending agreement, which may be in addition to a development charge that the owner is required to pay under a development charge by-law, to cover the net capital costs of the services designated in the agreement that are required to enable the land to be developed;

“front-ending agreement” means an agreement made under section 21;

“growth-related net capital cost” means the portion of the net capital cost of services that is reasonably attributable to the need for such net capital cost that results or will result from development in all or a defined part of the municipality;

“local board” means a local board as defined in the *Municipal Affairs Act*, other than a board defined in subsection 30 (6); R.S.O. 1980,  
c. 307

“municipality” means a city, town, village, township, improvement district or county or a regional, metropolitan or district municipality;

“Municipal Board” means the Ontario Municipal Board;

“net capital cost” means the capital cost less capital grants, subsidies and other contributions made to a municipality or that the council of the municipality anticipates will be made, including conveyances or payments under sections 41, 50 and 52 of the *Planning Act*, 1983, in respect of the capital cost; 1983, c. 1

“owner” means the owner of land or a person who has made application for an approval for the development of land upon which a development charge is imposed;

“prescribed” means prescribed by regulations made under this Act;

“services” means services designated in a development charge by-law or in an agreement made under section 21, as applicable;

“upper tier municipality” means a county or a regional, metropolitan or district municipality.

Adminis-  
tration

**2.** The Minister of Municipal Affairs is responsible for the administration of Parts I, II and IV and the Minister of Education is responsible for the administration of Part III.

## PART I

### DEVELOPMENT CHARGES

By-laws  
respecting  
development  
charges

**3.—(1)** The council of a municipality may pass by-laws for the imposition of development charges against land if the development of the land would increase the need for services and the development requires,

1983, c. 1

- (a) the passing of a zoning by-law or of an amendment thereto under section 34 of the *Planning Act, 1983*;
- (b) the approval of a minor variance under section 44 of the *Planning Act, 1983*;
- (c) A conveyance of land to which a by-law passed under subsection 49 (7) of the *Planning Act, 1983* applies;
- (d) the approval of a plan of subdivision under section 50 of the *Planning Act, 1983*;
- (e) a consent under section 52 of the *Planning Act, 1983*;
- (f) the approval of a description under section 50 of the *Condominium Act*; or
- (g) the issuing of a permit under the *Building Code Act* in relation to a building or structure.

R.S.O. 1980,  
c. 84

R.S.O. 1980,  
c. 51

Exceptions

(2) Subsection (1) does not apply in respect of an action mentioned in clauses (1) (a) to (g) that would have the effect only,

- (a) of permitting the enlargement of an existing dwelling unit; or
- (b) of creating one or two additional dwelling units as prescribed, in prescribed categories of existing residential buildings.

Mandatory  
provisions

(3) A by-law passed under subsection (1) shall,

- (a) designate those uses of land, buildings or structures upon which a development charge shall be imposed;
  - (b) designate the areas within which a development charge shall be imposed;
  - (c) establish the development charge, or the schedule of development charges, to be imposed in respect of the designated uses of land, buildings or structures; and
  - (d) designate services for which a development charge may be imposed.
- (4) A by-law passed under subsection (1) may, Other provisions
- (a) provide for the indexing of development charges based on one of the prescribed indices; and
  - (b) provide that a development charge shall be payable in money or by the provision of services or by a combination of both as may be agreed upon under subsection 9 (9) by the municipality and the owner.
- (5) Despite subsection (3), a by-law passed under subsection (1) may, Idem
- (a) designate categories of institutions for the purposes of clause (b);
  - (b) provide for a full or partial exemption of designated categories of institutions from the payment of development charges;
  - (c) designate categories of dwelling units as affordable housing; and
  - (d) provide for a full or partial exemption of designated categories of affordable housing from the payment of development charges.
- (6) No land, except land owned by and used for the purposes of a board as defined in subsection 30 (6) or a municipality, is exempt from a development charge under a by-law passed under subsection (1) by reason only that it is exempt from taxation under section 3 of the *Assessment Act*. Limited exemption
- (7) No development charge may be imposed with respect to, Restriction on development charges



1983, c. 1 (a) local services installed at the expense of the owner within a plan of subdivision as a condition of approval under section 50 of the *Planning Act, 1983*;

(b) local services installed at the expense of the owner as a condition of approval under section 52 of the *Planning Act, 1983*; or

R.S.O. 1980, c. 302 (c) local connections to water mains, sanitary sewers and storm drainage facilities installed at the expense of the owner including amounts imposed under a by-law passed under section 219 of the *Municipal Act*.

Public  
meeting

4.—(1) Before passing a development charge by-law, except a by-law passed pursuant to an order of the Municipal Board made under clause (11) (b), the council,

(a) shall hold at least one public meeting;

(b) shall give notice of the meeting in the manner and to the persons and organizations prescribed; and

(c) shall ensure that sufficient information is made available at the meeting to enable the public to understand generally the development charges proposal.

Right to be  
heard

(2) The meeting referred to in subsection (1) shall be held no earlier than twenty days after the requirements for the giving of notice have been complied with and any person who attends the meeting may make representations in respect of the proposed development charges.

Notice of  
by-law

(3) If the council passes a development charge by-law, except a by-law passed pursuant to an order of the Municipal Board under clause (11) (b), the clerk of the municipality shall, not later than fifteen days after the day the by-law is passed, give written notice of the passing of the by-law in the form and to the persons and organizations prescribed and the notice shall specify the last day for filing a notice of appeal under subsection (4).

Appeal

(4) Any person or organization may, not later than twenty days after written notice under subsection (3) is given, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.

(5) For the purposes of subsection (4), the written notice shall be deemed to be given, Timing of notice

- (a) where notice is given by publication in a newspaper, on the day that the publication occurs;
- (b) where notice is given by personal service, on the day that service of all required notices is completed; or
- (c) where notice is given by mail, on the day that the mailing of all required notices is completed.

(6) A clerk of a municipality who receives a notice of appeal shall compile a record which shall include, Record

- (a) a copy of the by-law certified by the clerk;
- (b) an affidavit or declaration certifying that the requirements for the giving of notice under subsection (3) have been complied with; and
- (c) the original or a true copy of all written submissions and material received in respect of the by-law before it was passed.

(7) The clerk shall forward the notice of appeal and the record to the secretary of the Municipal Board within thirty days of the last day of appeal and shall provide such other information or material as the Board may require in respect of the appeal. Notice and record to O.M.B.

(8) An affidavit or declaration of the clerk of the municipality that notice was given as required by subsection (3) or that no notice of appeal was filed under subsection (4) within the time allowed for appeal is conclusive evidence of the facts stated therein. Affidavit, declaration conclusive evidence

(9) The Municipal Board shall hold a hearing notice of which shall be given to such persons or organizations and in such manner as the Board may determine. Hearing

(10) The Municipal Board may, where it is of the opinion that the objection to the by-law set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing but before dismissing the appeal shall notify the appellant and give the appellant an opportunity to make representations as to the merits of the appeal. Early dismissal of appeal

(11) The Municipal Board may,

Determination by O.M.B.

- (a) dismiss the appeal;
- (b) order the council of the municipality to repeal the by-law in whole or in part or to amend the by-law in accordance with the Board's order; or
- (c) repeal the by-law in whole or in part or amend the by-law in such manner as the Board may determine.

Restrictions  
on  
amendments

(12) Despite subsection (11), the Municipal Board may not amend or order the amendment of a by-law so as to,

- (a) increase a development charge imposed by the by-law; or
- (b) alter the term of the by-law.

Date by-law  
effective

**5.—(1)** A development charge by-law comes into force on the date it is passed or the date specified in the by-law, whichever is later.

Retroactive  
repeal

(2) If the Municipal Board orders the council of a municipality to repeal a by-law in whole or in part, that part of the by-law that is repealed shall be deemed to have been repealed on the day the by-law came into force.

Refund

(3) The municipality shall refund all development charges paid under the by-law or that part of the by-law that is repealed under subsection 4 (11),

- (a) if repealed by the Municipal Board, within thirty days of the date of the order of the Board; or
- (b) if repealed by the council of the municipality, within thirty days of the date of repeal.

Retroactive  
amendments

(4) If the Municipal Board orders the council of a municipality to amend a by-law, the amendment shall be deemed to have come into force on the day the by-law came into force.

Refunds

(5) The municipality shall refund the difference between the development charges paid under that part of the by-law that is amended under subsection 4 (11) and the development charges required to be paid under the amendment,

- (a) if the by-law is amended by the Municipal Board, within thirty days of the date of the order of the Board; or



- (b) if the by-law is amended by the council of the municipality, within thirty days of the date of the amendment.

(6) A repeal or amendment made under subsection 4 (11) is not subject to appeal under subsection 4 (4). Restrictions on appeal

(7) A municipality shall give notice of the particulars of a development charge by-law that is in force in the manner and to the persons prescribed. Notice of by-law

**6.**—(1) A development charge by-law expires five years after the date it comes into force. Expiration of by-law

(2) Despite subsection (1), the council of a municipality may, Idem

- (a) provide in the by-law for a term of less than five years; or

- (b) repeal the by-law.

(3) Amendments to a by-law by council under subsection 4 (11) or 7 (1) do not affect the term of the by-law. Term of by-law

(4) Subject to subsections (5), (6) and (7), the council of a municipality in which a development charge by-law is in force may pass a new development charge by-law. New by-law

(5) Before passing a new development charge by-law, the council shall conduct a review of the development charge policies of the municipality. Review of policies

(6) In conducting a review under subsection (5), council shall ensure that adequate information is made available to the public, and for this purpose shall hold at least one public meeting, notice of which shall be given in at least one newspaper having general circulation in the municipality. Public meeting

(7) Sections 4 and 5 apply with necessary modifications to the passing of a by-law under subsection (4). Procedures

**7.**—(1) The council of a municipality that has passed a development charge by-law may amend the by-law. Amendments

(2) Sections 4 and 5 apply with necessary modifications to an amendment of a development charge by-law under subsection (1). Procedures

## Complaints

**8.—(1)** An owner may complain in writing to the council of a municipality in respect of the development charge imposed by the municipality on the owner's development that,

- (a) the amount of the development charge imposed was incorrect or was based on incorrect data;
- (b) the amount credited to the owner under section 13 is incorrect;
- (c) the amount of a previous development charge being credited under section 14 is incorrect; or
- (d) there was an error in the application of the development charge by-law.

When  
complaint to  
be made

(2) An owner may not submit a complaint under subsection (1) after ninety days following the latest of,

- (a) the date a building permit is issued;
- (b) the date a development charge is payable under subsection 9 (3); or
- (c) the date a development charge is payable under an agreement under subsection 9 (4) or (8).

## Idem

(3) The complaint shall state the name and address where notices can be given to the complainant and shall state the reasons for the complaint.

## Hearing

(4) The council shall give the complainant the opportunity to make representations and notice of the hearing shall be mailed to the complainant by the clerk not less than fourteen days before the date the complaint is to be considered.

Determi-  
nation by  
council

(5) After hearing the evidence and submissions of the complainant, the council may,

- (a) confirm the development charge; or
- (b) amend the development charge to the extent that, in the opinion of the council, a review of any or all of the matters in subsection (1) justifies such an amendment.

Notice of  
decision

(6) The clerk of the municipality shall, not later than fifteen days after the day a decision is made by the council, give written notice of the decision by mail to the complainant, and the notice shall specify the last day for filing an appeal, which

date shall be no earlier than twenty days after the date the letter is mailed.

(7) The complainant may appeal the decision of the council to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the reasons for the appeal. Appeal

(8) The clerk of the municipality who receives a notice of appeal under subsection (7) shall compile a record which shall include, Record

- (a) a copy of the development charge by-law certified by the clerk;
- (b) an affidavit or declaration certifying that the requirements for the giving of notice have been complied with; and
- (c) the original or a true copy of all written submissions and material in support of the complaint.

(9) The clerk shall forward the notice of appeal and the record to the secretary of the Municipal Board within thirty days of the last day of appeal and shall provide such other information and material that the Board may require in respect of the appeal. Notice and record to O.M.B.

(10) The parties to the appeal are the complainant and the municipality. Parties

(11) The Municipal Board shall hold a hearing notice of which shall be given to the parties to the appeal. Notice of hearing

(12) Despite subsection (11), the Municipal Board may, where it is of the opinion that the complaint set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing but before dismissing the appeal shall notify the appellant and give the appellant an opportunity to make representations as to the merits of the appeal. Early dismissal

(13) The Municipal Board may make any decision that could have been made by the council of the municipality. Decision by O.M.B.

(14) If the development charge is amended by the council or by the Municipal Board, the municipality shall immediately refund the difference between the development charge paid that was in dispute and the amount of the charge required by the council or the Municipal Board to be paid. Refund



When charge  
is due

**9.—(1)** A development charge is payable on the date a building permit is issued in relation to a building or structure on land to which a development charge applies.

Effect of  
non-payment

**(2)** Despite any other Act, a municipality is not required to issue a building permit in relation to a building or structure on land to which a development charge applies unless the development charge has been paid.

Exception

**(3)** Despite subsection (1), a municipality may, in a development charge by-law, provide that a development charge with respect to water supply services, sanitary sewer services, storm drainage services, transportation services and electrical power or energy services shall be payable, with respect to an approval of a plan of subdivision under section 50 of the *Planning Act, 1983*, immediately upon entering into the subdivision agreement.

1983, c. 1

Agreement  
respecting  
payments

**(4)** A municipality may enter into an agreement with an owner providing for the payment of a development charge before the date otherwise required for payment under subsection (1) or (3).

Idem

**(5)** Despite any provision of a development charge by-law, an owner entering into an agreement under subsection (4) is required to pay only the development charge in effect on the date it is payable under the agreement.

Payments  
non-trans-  
ferable

**(6)** The payments agreed to under subsection (4) are payable by the owner entering into the agreement and are not transferable to a subsequent owner.

Credits non-  
transferable

**(7)** Credits given under section 13 or 14 to an owner who has entered into an agreement under subsection (4) are not transferable to a subsequent owner.

Exceptions in  
agreements

**(8)** Despite subsections (1) and (3), a municipality may enter into an agreement with an owner providing for the payment of all or any portion of the development charge on dates later than the issuing of a building permit or the entering into of a subdivision agreement.

Services in  
lieu of  
payment

**(9)** Despite subsections (1) and (3), a municipality may by agreement permit an owner to provide services in lieu of the payment of all or any portion of a development charge.

Interest

**(10)** A municipality that has entered into an agreement under subsection (8) may charge interest, at a rate stipulated in the agreement, on that part of the development charge not paid in accordance with subsection (1).

**10.—**(1) If a development charge is imposed by an upper tier municipality, the treasurer of the upper tier municipality shall certify to the treasurer of the area municipality in which the land is located that the charge has been imposed, the amount of the charge, the manner in which the charge is to be paid and when the charge is due. Upper tier municipalities

(2) The treasurer of the area municipality shall collect the charge imposed by the upper tier municipality when due and shall, unless an extension of time is agreed to by the upper tier municipality, remit the amount of the charge to the treasurer of the upper tier municipality on or before the 25th day of the month following the month in which the charge is received by the area municipality. Collection of development charges

(3) Despite subsection (2), a development charge imposed by an upper tier municipality under subsection 9 (3), (4) or (8) may be collected by the upper tier municipality. Idem

(4) The treasurer of an upper tier municipality that has collected a development charge under subsection (3) shall certify to the treasurer of the area municipality in which the land is located that the charge has been collected. Certification

(5) If building permits are issued by an upper tier municipality, the chief building official of the upper tier municipality shall certify to the treasurer of the area municipality in which the land is located that all applicable law within the meaning of the *Building Code Act*, except the payment of development charges, has been complied with. Idem  
R.S.O. 1980.  
c. 51

(6) The treasurer of the area municipality shall, upon receipt of the certificate under subsection (5) and upon payment of all development charges and education development charges under Part III imposed on the development, immediately certify to the chief building official of the upper tier municipality that all development charges and education development charges have been paid. Idem

(7) If building permits are issued by an upper tier municipality, the upper tier municipality may, if agreed to by the area municipality, collect all development charges and education development charges. Delegation of collection powers

**11.** A municipality that has passed a development charge by-law may register the by-law or a certified copy of it on the land to which it applies. Notice of by-law

**12.—**(1) If the development charge or any part thereof imposed by a municipality, other than an upper tier municipi- Collection



pality, remains unpaid after the due date, the amount unpaid shall be added to the tax roll and shall be collected as taxes.

Idem

(2) If the development charge or any part thereof imposed by an upper tier municipality remains unpaid after the due date, the treasurer of the upper tier municipality shall certify to the treasurer of the area municipality in which the land is located that the amount is unpaid and the amount unpaid shall be added to the tax roll of the area municipality and shall be collected as taxes.

Credit for  
services

**13.—**(1) A municipality that permits the provision of services in lieu of the payment of all or any portion of a development charge shall give a credit for an amount equal to the reasonable cost to the owner of providing the services.

Idem

(2) If a municipality and owner enter an agreement that permits an owner to provide services additional to or of a greater size or capacity than is required under a development charge by-law, the municipality may agree to give a credit for an amount up to the reasonable cost to the owner of providing the services.

Idem

(3) A credit given under subsection (2) shall not be charged to a reserve fund established under section 16.

Credits

**14.—**(1) If an owner or a former owner has, before the coming into force of a development charge by-law, paid all or any portion of a charge related to development pursuant to an agreement under section 50 or 52 of the *Planning Act, 1983* or a predecessor thereof with respect to land within the area to which the by-law applies, the municipality shall give a credit for the amount of the charge paid.

1983, c. 1

Idem

(2) If an owner or a former owner has, before the coming into force of a development charge by-law, provided services in lieu of the payment of all or any portion of a charge related to development pursuant to an agreement under section 50 or 52 of the *Planning Act, 1983* or a predecessor thereof with respect to land within the area to which the by-law applies, the municipality shall give a credit for an amount equal to the reasonable cost to the owner or to the former owner of providing the services.

Idem

R.S.O. 1980,  
c. 302;  
1960-61,  
c. 120;  
1961-62,  
c. 171

(3) If an owner is required to pay a charge to a municipality under a by-law passed under section 215 of the *Municipal Act*, section 4 of *The City of Ottawa Act, 1960-61* or section 1 of *The City of Toronto Act, 1961-62*, the municipality shall reduce the development charge payable under the develop-



ment charge by-law by an amount equal to the charge imposed by that by-law.

(4) If a conflict exists between the provisions of a development charge by-law and an agreement referred to in subsection (1) or (2), the provisions of the agreement prevail to the extent of the conflict. Conflicts

(5) If a conflict exists between the provisions of a development charge by-law and any other agreement between a municipality and an owner or a former owner with respect to land within the area to which the by-law applies, the provisions of the agreement prevail to the extent that there is a conflict. Idem

**15.**—(1) A municipality shall not levy more than one development charge on land to which a development charge applies even though two or more of the actions described in clauses 3 (1) (a) to (g) are required before that land can be developed. Multiple requirements

(2) Despite subsection (1), if two or more of the actions described in clauses 3 (1) (a) to (g) occur at different times, a municipality may require the payment of an additional development charge if the subsequent action has the effect of increasing the need for services. Idem

**16.**—(1) Payments received by a municipality under this Part shall be maintained in a separate reserve fund or funds and shall be used only to meet growth-related net capital costs for which the development charge was imposed. Reserve fund

(2) Subsections 165 (2) and (3) of the *Municipal Act* apply with necessary modifications to payments received by a municipality under this Part. R.S.O. 1980, c. 302, s. 165 applies

**17.** The treasurer of the municipality shall, in each year, on or before such date as council may direct, furnish to the council a statement in respect of each reserve fund established under section 16 containing the information prescribed. Statement of treasurer

**18.**—(1) A municipality shall pay interest to persons to whom overpayments are refunded under subsection 5 (3), 5 (5) or 8 (14) calculated in the manner prescribed. Interest

(2) Interest shall be calculated from the time that the overpayment was collected to the time that the refund is paid. Idem

(3) The refund shall include the interest owed. Idem

## Regulations

**19.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing, for the purposes of section 3, the manner in which development charges shall be calculated;
- (b) prescribing the number of additional dwelling units and the categories of existing residential buildings for the purposes of clause 3 (2) (b);
- (c) prescribing, for the purposes of section 3, those services for which development charges shall not be imposed;
- (d) prescribing, for the purposes of clause 3 (4) (a), an index or indices that may be used;
- (e) prescribing, for the purposes of subsection 4 (1), the persons that are to be given notice and the manner in which notice is to be given;
- (f) prescribing, for the purposes of subsection 4 (3), the persons and agencies that are to be given notice and the manner and form in which notice is to be given;
- (g) prescribing, for the purposes of subsection 5 (7), the information to be provided in the notice and the persons to whom notice is to be given;
- (h) prescribing, for the purposes of section 13, the manner in which credits shall be calculated;
- (i) prescribing the information to be provided in a statement of the treasurer under section 17;
- (j) prescribing methods of calculating and establishing interest rates under section 18;
- (k) prescribing anything that in Parts I, II and IV of this Act may be prescribed by regulation.

## PART II

### FRONT-END PAYMENTS

## Definition

**20.** In this Part, “benefiting owner” means an owner of land within a benefiting area other than an owner who is party to a front-ending agreement.

**21.—**(1) A municipality that has passed a development charge by-law may enter into a front-ending agreement or agreements with any or all owners within a benefiting area providing for the payment by those owners of a front-end payment or for the installation of services by the owners, or any combination thereof.

Front-ending  
agreement

(2) A front-ending agreement shall contain,

Contents of  
agreement

- (a) a list of the services for which front-end payments shall be made or services installed by the owner;
- (b) the estimated cost of installing the services;
- (c) the proportion of the front-end payment or the cost of the installation of services to be paid by each owner who is a party to the agreement;
- (d) the agreement of the owners to immediately pay to the municipality the actual costs incurred by the municipality in the installation of the services in accordance with the proportions determined under clause (c);
- (e) the agreement of the municipality to immediately reimburse the owners if the actual cost incurred by the municipality in the installation of the services is lower than the estimated cost in accordance with the proportions determined under clause (c);
- (f) a description of the benefiting area for each of the services;
- (g) a list of the services in the agreement for which a development charge is payable;
- (h) a list of the services in the agreement which are services described in subsection 3 (7);
- (i) a description of the manner in which the portion of the payment to be made by each benefiting owner with respect to the services listed in clause (g) is to be calculated;
- (j) if the agreement provides for the installation of services by the owners who are parties to the agreement, the agreement of the municipality to use the reasonable cost to the owners of installing the services in making the calculations under clause (i);



(k) the agreement of the municipality to require each benefiting owner to pay, with respect to the services listed in clause (g), that benefiting owner's portion of the front-end payment; and

(l) the period of time during which the agreement is in force.

Idem

(3) A front-ending agreement may provide that the reasonable costs to the municipality of administering the agreement, including the cost of consultants and studies required in preparation of the agreement, are to be included in calculating the front-end payment.

Idem

(4) A front-ending agreement may provide for the indexing of the payments required to be made by the benefiting owner under clause (2) (k).

Front-ending  
agreement

**22.—**(1) The municipality shall give notice of the front-ending agreement,

(a) by mailing it to all owners within the benefiting area; or

(b) by publishing it in a newspaper having general circulation in the municipality.

Contents of  
notice

(2) The notice referred to in subsection (1) shall explain the nature and purpose of the agreement and shall indicate that the agreement can be viewed in the office of the clerk during normal office hours.

Objections-

(3) Any owner to whom notice of the agreement is given, except a party to the agreement, may object to the agreement by filing a written objection with the clerk of the municipality within twenty-one days of the date of the giving of the notice of the agreement.

Notice

(4) For the purposes of subsection (3), notice shall be deemed to be given,

(a) where notice is given by mail, on the day the mailing of all required notices is completed; or

(b) where notice is given by publication in a newspaper, on the day that the publication occurs.

Effective  
date of  
agreement

(5) If no objection is filed within twenty-one days, the agreement shall be deemed to have come into effect on the date it was fully executed.

(6) If an objection is filed, the clerk shall immediately forward it to the Municipal Board. Objections to  
O.M.B.

(7) The Municipal Board shall hold a hearing and shall confirm the agreement, refuse to confirm the agreement or direct a municipality to make changes to the agreement. Hearing to  
O.M.B.

(8) If an objection is filed under subsection (3), the agreement comes into effect when approved by the Municipal Board or, if changes are directed by the Board, when the municipality and the other parties to the agreement have executed the agreement as directed to be changed by the Board. Effective  
date where  
objection

(9) The parties to the Municipal Board hearing are the municipality, the other parties to the agreement and the owners who filed written objections within the period referred to in subsection (3). Parties

(10) The Municipal Board may, where it is of the opinion that the objection to the agreement is insufficient, dismiss the objection without holding a full hearing, but before dismissing the objection it shall notify the objector and give the objector an opportunity to make representations as to the merits of the objection. Early  
dismissal of  
objection

**23.** Section 64 of the *Ontario Municipal Board Act* does not apply to a front-ending agreement or to special accounts established under sections 27 and 28. O.M.B.  
approval not  
required  
R.S.O. 1980,  
c. 347

**24.** An agreement entered into under section 21 may be registered against the land in the benefiting area, and subject to the *Registry Act* and the *Land Titles Act*, the municipality, Registration  
  
R.S.O. 1980,  
cc. 445, 230

(a) may enforce the provisions of the agreement against any and all subsequent owners of the lands owned by the parties thereto; and

(b) may enforce the provisions of the agreement made under clauses 21 (2) (d) and (k), subsection 21 (4) and section 26 against any and all owners and subsequent owners of lands in the benefiting area.

**25.** If a front-ending agreement is in effect, no person shall undertake any development that requires an approval mentioned in subsection 3 (1) within a benefiting area until section 26 has been complied with. Compliance  
necessary

**26.** A municipality that has entered into a front-ending agreement shall require a benefiting owner to pay the benefiting owner's portion of the front-end payment as a condition of Payments to  
parties to  
agreement

an approval granted during the term of the agreement of any development on that portion of the benefiting owner's land located within the benefiting area.

Special  
accounts

**27.**—(1) The municipality shall place all money received from the parties to the front-ending agreement in a special account and shall use the funds in such account only for,

- (a) paying the actual net cost of the installation of the services specified in the agreement; and
- (b) reimbursing to the parties to the agreement any funds remaining in the account after the installation of the services referred to in clause (a).

Idem

(2) During the term of the agreement the municipality shall provide annually to the parties to the front-ending agreement a statement setting out the particulars of payments made out of the account, the balance remaining in the account and additional payments, if any, that are or will be required from the parties pursuant to the agreement.

Distribution  
of section 26  
funds

**28.**—(1) The municipality shall place money received under section 26 in a special account and shall, immediately upon receipt of the money, by registered mail,

- (a) notify the parties to the front-ending agreement that the money is available to be paid out; and
- (b) request the parties to give directions to the municipality as to whom the money is to be paid.

Payment to  
party

(2) Upon receipt of a direction from a party to a front-ending agreement, the municipality shall pay to the party named in the direction the proportion of the money received by the municipality to which the party is entitled.

Payment into  
court

(3) If within ninety days of mailing the notice under subsection (1) the municipality has not received a direction from a party, the municipality may pay the money owing to that party into the Supreme Court.

Notification  
of payment

(4) A municipality that has paid money into court under subsection (3) shall immediately notify the party to whom the money is owing, by registered mail sent to the party's last known address, that,

- (a) the money has been paid into court; and



- (b) the party must apply to the court for the release of the money.

(5) If the party to whom notice was sent, or an heir, successor or assign thereof, has not applied to the court under clause (4) (b) within twelve months of the mailing of the notice, the municipality may apply to the court for the release of the money to the municipality.

Application for release of funds

(6) If the court has not received a request for the release of the money before the application of the municipality is received, it shall release the money to the municipality.

Release of funds

(7) The municipality may place money released by the court in its general account.

Funds to general account

(8) The municipality is required to reimburse the parties to the agreement only when the money referred to in subsection (1) is paid and only in accordance with subsections (1) to (4).

Limited responsibility

(9) Payments made under subsection (1) with respect to services referred to in clause 21 (2) (g) shall be deducted from the amount otherwise payable by an owner pursuant to a development charge by-law.

Deductions

### PART III

#### EDUCATION DEVELOPMENT CHARGES

#### 29.—(1) In this Part,

#### Definitions

“board” means a board described in paragraph 3 of subsection 1 (1) of the *Education Act*, other than,

R.S.O. 1980.  
c. 129

- (a) a board established under section 70 of the *Education Act*,
- (b) a board of education for an area municipality in The Municipality of Metropolitan Toronto,
- (c) The Metropolitan Toronto French-Language School Council, and
- (d) The Ottawa-Carleton French-language School Board,

but includes the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board and The Metropolitan Toronto School Board;

“commercial development” means a development other than a residential development;

“education capital cost” means costs incurred or proposed to be incurred by a board,

- (a) to acquire school facilities to provide pupil accommodation,
- (b) to construct, expand, alter or improve school facilities to provide pupil accommodation,
- (c) to furnish or equip the school facilities described in clauses (a) and (b), and
- (d) to undertake studies in connection with any of the matters in clauses (a), (b) and (c);

“education development charge” means a development charge imposed under a by-law passed under section 30 respecting growth-related net education capital costs incurred or proposed to be incurred by a board;

“education development charge by-law” means a by-law passed under subsection 30 (1);

“education development charges account” means an account established in accordance with the regulations for money collected under an education development charge by-law;

“growth-related net education capital cost” means the prescribed portion of the net education capital cost reasonably attributable to the need for such net education capital cost that is attributed to or will result from development in all or part of the area of jurisdiction of a board;

“net education capital cost” means the education capital cost reduced by any capital grants and subsidies paid or that may be paid to the board in respect of such education capital cost;

“owner” means the owner of the land or a person who has made application for an approval for the development of the land upon which an education development charge is imposed;

“pupil accommodation” means a building to accommodate pupils or an addition or alteration to a building that enables the building to accommodate an increased number of pupils;

“school facilities” means a school site described in paragraph 53 of subsection 1 (1) of the *Education Act*.

R.S.O. 1980,  
c. 129

(2) In this Part, reference to the area of jurisdiction of a board, in the case of a county combined separate school board or a district combined separate school board, is the area designated by the regulations made under the *Education Act*.

Interpretation

**30.**—(1) If there is residential development in the area of jurisdiction of a board that would increase education capital costs, the board may pass by-laws for the imposition of education development charges against land undergoing residential and commercial development in that area if the residential and commercial development require,

Education  
development  
charge by-law

(a) the passing of a zoning by-law or of an amendment thereto under section 34 of the *Planning Act, 1983*;

1983, c. 1

(b) the approval of a minor variance under section 44 of the *Planning Act, 1983*;

(c) a conveyance of land to which a by-law passed under subsection 49 (7) of the *Planning Act, 1983* applies;

(d) the approval of a plan of subdivision under section 50 of the *Planning Act, 1983*;

(e) a consent under section 52 of the *Planning Act, 1983*;

(f) the approval of a description under section 50 of the *Condominium Act*; or

R.S.O. 1980,  
c. 84

(g) the issuing of a permit under the *Building Code Act* in relation to a building or structure.

R.S.O. 1980,  
c. 51

(2) Subsection (1) does not apply in respect of an action mentioned in clauses (1) (a) to (g) that would have the effect only,

Exceptions

(a) of permitting the enlargement of an existing dwelling unit; or

(b) of creating one or two additional dwelling units as prescribed, in prescribed categories of existing residential buildings.

(3) A by-law passed under subsection (1) shall,

Contents of  
by-law



- (a) designate the categories of residential development and commercial development upon which an education development charge shall be imposed;
- (b) designate those uses of land, buildings or structures upon which an education development charge shall be imposed;
- (c) designate the areas in which an education development charge shall be imposed; and
- (d) subject to the regulations, establish the education development charges to be imposed in respect of the designated categories of development and the designated uses of land, buildings or structures.

## Indexing

(4) A by-law passed under subsection (1) may provide for the indexing of education development charges based on one of the prescribed indices.

## Limited exemption

(5) No land, except land owned by and used for the purposes of a board or a municipality, is exempt from an education development charge under a by-law passed under subsection (1) by reason only that it is exempt from taxation under section 3 of the *Assessment Act*.

R.S.O. 1980,  
c. 31

## Interpretation

(6) In subsection (5), "board" has the same meaning as in section 29 except that it includes the boards described in clauses (a) to (d) of that definition.

## Conditions

(7) The imposition of an education development charge by a board is subject to the prescribed conditions.

## Public meeting

**31.—**(1) Before passing an education development charge by-law, except a by-law passed pursuant to an order of the Municipal Board made under clause (11) (b), the board,

- (a) shall hold at least one public meeting;
- (b) shall give notice of the meeting in the manner and to the persons and organizations prescribed; and
- (c) shall ensure that sufficient information is made available to enable the public to understand generally the education development charge proposal.

## Right to be heard

(2) The meeting referred to in subsection (1) shall be held no earlier than twenty days after the requirements for the giving of notice have been complied with and any person who

attends the meeting may make representations in respect of the proposed education development charges.

(3) If the board passes an education development charge by-law, other than a by-law passed pursuant to an order of the Municipal Board under clause (11) (b), the secretary of the board shall, not later than fifteen days after the day the by-law is passed, give written notice of the passing of the by-law in the manner and in the form and to the persons and organizations prescribed and the notice shall specify the last day for filing a notice of appeal under subsection (4). Notice of  
by-law

(4) Any person or organization may, not later than twenty days after written notice under subsection (3) is given, appeal to the Municipal Board by filing with the secretary of the board a notice of appeal setting out the objection to the by-law and the reasons in support of the objection. Appeal

(5) For the purposes of subsection (4), written notice shall be deemed to be given, Timing of  
notice

- (a) where notice is given by publication in a newspaper, on the day that the publication occurs;
- (b) where notice is given by mail, on the day that the mailing of all required notices is completed; or
- (c) where notice is given by publication and by mail, on the later of the days that publication occurs or mailing is completed.

(6) The secretary of the board who receives a notice of appeal shall compile a record which shall include, Record

- (a) a copy of the by-law certified by the secretary;
- (b) an affidavit or declaration certifying that the requirements for the giving of notice under subsection (3) have been complied with; and
- (c) the original or a true copy of all written submissions and material received in respect of the by-law before it was passed.

(7) The secretary of the board shall forward the notice of appeal and the record to the secretary of the Municipal Board within thirty days of the last day of appeal and shall provide such other information or material as the Municipal Board may require in respect of the appeal. Notice and  
record to  
O.M.B.

Affidavit,  
declaration  
conclusive  
evidence

(8) An affidavit or declaration of the secretary of the board that notice was given as required by subsection (3) or that no notice of appeal was filed under subsection (4) within the time allowed for appeal is conclusive evidence of the facts stated therein.

Hearing

(9) The Municipal Board shall hold a hearing notice of which shall be given to such persons or organizations and in such manner as the Municipal Board may determine.

Early  
dismissal of  
appeal

(10) The Municipal Board may, where it is of the opinion that the objection to the by-law set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing but before dismissing the appeal shall notify the appellant and give the appellant the opportunity to make representations as to the merits of the appeal.

Determi-  
nation by  
O.M.B.

(11) The Municipal Board may,

- (a) dismiss the appeal;
- (b) order the board to repeal the by-law in whole or in part or to amend the by-law in accordance with the Municipal Board's order; or
- (c) repeal the by-law in whole or in part or amend the by-law in such manner as the Municipal Board may determine.

Restriction  
on  
amendments

(12) Despite subsection (11), the Municipal Board may not amend or order the amendment of a by-law so as to,

- (a) increase an education development charge imposed by the by-law; or
- (b) alter the term of the by-law.

When by-law  
effective

**32.—**(1) An education development charge by-law comes into force on the fifth day following the day it is passed or the day specified in the by-law, whichever is later.

Retroactive  
repeal

(2) If the Municipal Board orders a board to repeal a by-law in whole or in part, that part of the by-law that is repealed shall be deemed to have been repealed on the day the by-law came into force.

Refund

(3) The treasurer of the education development charges account shall refund all education development charges paid under the by-law or that part of the by-law that is repealed under subsection 31 (11),



(a) if repealed by the Municipal Board, within thirty days of the date of the order of the Municipal Board; or

(b) if repealed by the board, within thirty days of the date of repeal.

(4) If the Municipal Board orders a board to amend a by-law in whole or in part, that part of the by-law that is amended ceases to be in force and the amendment shall be deemed to have come into force on the date the by-law came into force. Retroactive amendments

(5) The treasurer of the education development charges account shall refund the difference between the education development charges paid under that part of the by-law that is amended under subsection 31 (11) and the education development charges required to be paid under the amendment, Refunds

(a) if the by-law is amended by the Municipal Board, within thirty days of the date of the order of the Municipal Board; or

(b) if the by-law is amended by the board, within thirty days of the date of the amendment.

(6) A repeal or amendment made under subsection 31 (11) is not subject to appeal under subsection 31 (4). Restrictions on appeal

(7) A refund under this section shall be paid to the owner and the treasurer of the education development charges account shall inform the municipal treasurer of the amount of the refund. Direct refund

**33.—**(1) An education development charge by-law expires five years after the date it comes into force. Expiration of by-law

(2) Despite subsection (1), a board may, Idem

(a) provide in the by-law for a term of less than five years; or

(b) repeal the by-law.

(3) Despite subsection (1), if an education development charge by-law is in force in respect of an area, the term of an education development charge by-law passed by another board with respect to the same area shall expire on the date of expiration of the first-mentioned by-law. Concurrent terms

Change of  
term

(4) Where a board repeals its education development charge by-law and another board that has jurisdiction in all or part of the same area has passed a by-law that under subsection (3) would expire on the date of expiration of the first-mentioned by-law, that other board may determine that the by-law shall be in effect for up to five years after the date it comes into force and, where it does so, the board shall give notice of its determination to the same persons and in the same manner as provided under subsection 37 (1).

New  
education  
development  
charge by-law

(5) Subject to subsections (6), (7) and (8), a board that has passed an education development charge by-law that is in force may pass a new education development charge by-law.

Review of  
policies

(6) Before passing a new education development charge by-law, the board shall conduct a review of the education development charge policies of the board.

Public  
meeting

(7) In conducting a review under subsection (6), the board shall ensure that adequate information is made available to the public, and for this purpose shall hold at least one public meeting, notice of which shall be given in at least one newspaper having general circulation in the area of jurisdiction of the board.

Idem

(8) Sections 31 and 37 apply with necessary modifications to a by-law under subsection (5).

Amendment

**34.—**(1) A board may amend an education development charge by-law and the amendment shall come into force on the fifth day following the date the amendment is passed and the part of the by-law that is amended ceases to be in force on that day.

Idem

(2) Sections 31 and 37 apply with necessary modifications to an amendment made under this section.

Payment of  
charge

**35.—**(1) An education development charge is payable,

- (a) to the municipality in which the development takes place on the date a building permit is issued in relation to a building or structure on land to which an education development charge applies; or
- (b) if the development takes place in territory without municipal organization, to the board that imposed the education development charge thirty days after the board mails a notice to the owner setting out the amount of the charge.

(2) An education development charge imposed by a board in respect of commercial development is the amount determined in the manner prescribed or calculated using the formula prescribed.

Commercial  
development

(3) Despite any other Act, a municipality is not required to issue a building permit in relation to a building or structure on land to which an education development charge by-law applies unless the education development charge has been paid.

Charge to be  
paid before  
building  
permit issued

(4) Despite subsection (1), and subject to subsection (5) and the consent of the Minister of Education, a board may by agreement permit an owner to provide school facilities in lieu of the payment of all or any portion of an education development charge and the board,

Facilities in  
lieu of  
payment

(a) shall advise the treasurer of the municipality in which the land is situate of the amount of the credit that shall be applied against the education development charge; or

(b) if the land is located in territory without municipal organization, shall provide a credit to the owner against the educational development charge.

(5) If more than one board has jurisdiction in an area and one or more boards are to receive school facilities under subsection (4), all of the boards that have imposed an education development charge in that area are required to be parties to the agreement.

Necessary  
parties

**36.—**(1) An owner or board may complain in writing to the council of the municipality in which the land is situate or, where the land is situate in territory without municipal organization, an owner may complain to the board that, in respect of the education development charge of that owner,

Complaints

(a) the amount of the education development charge imposed was incorrect or based on incorrect data;

(b) there was an error in the application of the education development charge by-law; or

(c) the amount credited to an owner under subsection 35 (4) is incorrect.

(2) An owner or board may not submit a complaint under subsection (1) after ninety days following the later of,

When  
complaint to  
be made



(a) the date a building permit is issued, or if development takes place in territory without municipal organization, the date that the education development charge is payable under clause 35 (1) (b); or

(b) the date an agreement is entered into under subsection 35 (4).

Procedures  
adopted

(3) Subsections 8 (3) to (14) apply with necessary modifications to a complaint under subsection (1).

Refunds

(4) If a final determination of a complaint has been made and a refund is due to the owner, the treasurer of the education development charges account shall pay the amount of the refund to the treasurer of the municipality who shall reimburse the owner.

Idem

(5) If a final determination of a complaint has been made and a refund is due to the board, the treasurer of the municipality shall pay the amount of the refund to the treasurer of the education development charges account.

Underpayments

(6) If a final determination of a complaint has been made and the owner is required to pay an additional amount, the treasurer of the municipality or, in respect of territory without municipal organization, the treasurer of the board, shall collect the additional amount due from the owner and shall remit the amount to the treasurer of the education development charges account.

Distribution  
of by-law

**37.—**(1) A board that passes a by-law under subsection 30 (1) shall submit to the treasurer of each municipality all or part of which is made subject to an education development charge a copy of the by-law and provide a copy to the secretary of any other board that has jurisdiction in the same or part of the same area of the board that passed the by-law and forward a copy to the Minister of Education.

Special  
accounts

R.S.C. 1985,  
c. B-1  
1987, c. 33

(2) Educational development charges accounts shall be established in accordance with the regulations and deposited with a chartered bank listed in Schedule I to the *Bank Act* (Canada) or a trust corporation registered under the *Loan and Trust Corporations Act, 1987*.

Territory  
without  
municipal  
organization

(3) Where the area of jurisdiction of a board includes territory without municipal organization, all or part of which is made subject to an education development charge, the board shall exercise the powers and duties of a municipal council for such territory in respect of collecting the charge and the offic-

ers of the board have the same powers and duties as similar officers in a municipality.

(4) Where an education development charge is imposed by a board, the treasurer of the municipality or board, as the case requires, shall collect the charge imposed when due and, on or before the 25th day of the month next following the month in which the charge is collected, shall deposit the amount of the charge in the education development charges account established in respect of the by-law under which the charge is imposed.

Collection of  
charge

(5) On or before the fifth day of the month following a month in which a deposit is made under subsection (4), the treasurer of the municipality shall forward to the treasurer of the board or the treasurer of the board shall prepare a statement setting out the prescribed information in respect of the period that began on the 26th day of the month before the preceding month and that ended on the 25th day of the preceding month.

Statement

(6) If two or more boards have imposed an education development charge by-law upon an area, the statement mentioned in subsection (5) shall be prepared in respect of the money collected and forwarded to the treasurer of each board that passed a by-law under which the money was collected.

Idem

**38.** A board that has passed an education development charge by-law may register the by-law or a certified copy of it on the land to which it applies.

Registration  
of notice

**39.** If an education development charge or any part thereof remains unpaid after the due date, the amount unpaid shall be added to the tax roll of the municipality or board, as the case requires and shall be collected as taxes and remitted to the treasurer of the education development charges account established in respect of the by-law under which the education development charge is imposed.

Collection

**40.** On or before the 25th day of the month next following the month in which an education development charge is collected under section 39, the municipality shall pay to the treasurer of the education development charges account all money received in payment of education development charges.

Transfer of  
money

**41.** If an upper tier municipality issues building permits, subsections 32 (7), 35 (1) and (4) and sections 36, 37 and 40 apply to the upper tier municipality and not to the area municipality.

Upper tier  
municipalities

## Interest

**42.**—(1) The treasurer of the education development charges account shall pay interest out of the account to persons to whom overpayments are refunded under subsections 32 (3) and (5) and 36 (4) calculated in the manner prescribed.

## Period during which interest is payable

(2) Interest shall be calculated from the time that the overpayment was collected to the time that the refund is paid.

## Payment of interest

(3) The refund shall include the interest owed.

## Regulations

**43.** The Lieutenant Governor in Council may make regulations that may have general or particular application in respect of a board,

- (a) respecting any matter that is referred to as prescribed by the regulations;
- (b) prescribing forms and providing for their use;
- (c) governing the establishment and administration of the education development charges account;
- (d) providing for the application, placement in a reserve, withdrawal and use of the money deposited in or accredited to an education development charges account and requiring the approval of the Minister in respect of the manner in which or the rate at which the money is withdrawn;
- (e) prescribing the powers of the treasurer of the education development charges account in relation to the withdrawal of funds;
- (f) requiring the approval of the Minister of Education to any factor, criterion, rate, amount, portion, estimate or project used in determining an education development charge;
- (g) prescribing the manner of calculating or determining education development charges and prescribing classes of persons that may make determinations necessary for the calculation of education development charges;
- (h) providing for the sharing of proceeds where more than one board establishes a charge in respect of the same area;
- (i) prescribing, for the purposes of subsection 30 (4), an index or indices that may be used;



- (j) prescribing information which boards must provide to other boards and to the Minister for the purposes of developing education development charges under this Part;
- (k) prescribing methods of calculating and establishing interest rates under section 42;
- (l) prescribing the manner in which notice shall be given wherever notice is required under this Part, the persons and agencies to whom notice shall be given, and the form of the notice;
- (m) prescribing the terms of agreements for credit in lieu of payment of education development charges, determining the amount of the credit and governing the allocation of the credit between or among boards;
- (n) requiring a board to exempt an owner from an educational development charge if the owner meets the prescribed conditions.

## PART IV

### GENERAL

**44.**—(1) A by-law or resolution providing for the payment of charges related to development that is in effect on the date of the coming into force of this Act shall remain in effect until the earliest of,

Existing  
development  
charges  
by-law

- (a) the repeal of the by-law or resolution;
- (b) the coming into force of a by-law under section 3;  
or
- (c) two years after the date of the coming into force of this Act.

(2) A by-law or resolution referred to in subsection (1) shall not be amended during the period it remains in effect.

No  
amendments  
permitted

(3) Subsection (1) does not apply with respect to a by-law referred to in subsection 14 (3) or to a by-law passed under section 41 of the *Planning Act, 1983*.

Exceptions

**45.**—(1) A municipality shall not enter into an agreement under section 50 or 52 of the *Planning Act, 1983* that imposes

Certain  
agreements  
under  
1983, c. 1

a charge related to a development, except a charge referred to in subsection 3 (7), after the earlier of,

- (a) the coming into force of a by-law under section 3; or
- (b) two years after the date of the coming into force of this Act.

Idem

(2) An agreement with respect to charges related to development made under section 50 or 52 of the *Planning Act, 1983* that is in effect on the earlier of the dates referred to in clauses (1) (a) and (b) remains in effect.

Referrals to  
continue

**46.**—(1) A request made before the coming into force of this Act for a referral under subsection 50 (17) of the *Planning Act, 1983* with respect to a condition relating to a charge related to development shall be continued and disposed of under the *Planning Act, 1983*.

Appeals  
under  
1983, c. 1  
continued

(2) An appeal made before the coming into force of this Act under subsection 52 (7) of the *Planning Act, 1983* with respect to a condition relating to a charge related to development shall continue and be disposed of under the *Planning Act, 1983*.

Conflicts

(3) If a decision of the Municipal Board respecting a matter mentioned under subsection (1) or (2) conflicts with a development charge by-law, the decision of the Board prevails to the extent of the conflict.

Agreements  
not affected  
1983, c. 1

**47.** Except as stated herein, this Act does not affect an agreement made under section 50 or 52 of the *Planning Act, 1983*.

No right of  
petition  
R.S.O. 1980,  
c. 347

**48.** Despite section 94 of the *Ontario Municipal Board Act*, there is no right to file a petition under that section in respect of any order or decision of the Municipal Board made in respect of any matter appealed to the Board under this Act.

Conflicts

**49.** In the event of conflict between the provisions of this Act and any other general or special Act, the provisions of this Act prevail.

Commence-  
ment

**50.** This Act comes into force on the day it receives Royal Assent.

Short title

**51.** The short title of this Act is the *Development Charges Act, 1989*.

## CHAPTER 59

### An Act respecting Independent Health Facilities

*Assented to November 23rd, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) In this Act,**

Definitions

“assessor” means an assessor appointed under section 27 or 29;

“Board”, except in section 36, means the Health Facilities Appeal Board under the *Ambulance Act*;

R.S.O. 1980,  
c. 20

“College” means the College of Physicians and Surgeons of Ontario;

“Director” means the Director appointed under section 4;

“facility fee” means a charge or a fee for or in respect of a service or operating cost that,

(a) supports, assists and is a necessary adjunct, or any of them, to an insured service, and

(b) is not part of the insured service;

“health facility” means a place in which one or more members of the public receive health services and includes an independent health facility;

“independent health facility” means a health facility in which one or more members of the public receive services that are insured services and for which facility fees are charged, but does not include a health facility mentioned in section 2;

“inspector” means an inspector appointed under section 25 or 26;

“insured person” has the same meaning as in the *Health Insurance Act*;

R.S.O. 1980,  
c. 197



“insured service” means,

- (a) a service rendered by a physician for which an amount payable is prescribed by the regulations under the *Health Insurance Act*, or
- (b) a service prescribed as an insured service under the *Health Insurance Act* rendered by a practitioner within the meaning of that Act;

R.S.O. 1980,  
c. 197

“licence” means a licence issued by the Director under this Act;

“maximum allowable consideration”, in relation to a licence for an independent health facility, means,

- (a) if section 7 applied with respect to the facility at the time it came into force, the amount prescribed by the regulations or determined by the method prescribed by the regulations, or
- (b) in any other case, zero;

“medical care” means health care;

“medical record” means a record relating to health services;

“Minister” means the Minister of Health;

“Ministry” means the Ministry of Health;

“patient” means a person who receives health services in a health facility;

“physician” means a legally qualified medical practitioner;

“Registrar” means the Registrar of the College of Physicians and Surgeons of Ontario;

“regulations” means regulations made under this Act;

“voting share” means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of a contingency that has occurred and is continuing.

Interest  
affecting the  
control of a  
corporation

(2) A person shall be deemed to have an interest affecting the control of a corporation if the person alone or with one or

more associates directly or indirectly beneficially owns or controls the lesser of,

- (a) voting shares in the corporation in a sufficient number to permit that person either alone or with one or more associates to direct the management and policies of the corporation; or
- (b) voting shares to which are attached 10 per cent or more of the voting rights attached to all issued and outstanding voting shares of the corporation.

(3) Persons shall be deemed to be associates of each other if, Associates

- (a) one person is a corporation of which the other person is an officer or director;
- (b) one person is a partner of the other person;
- (c) one person is a corporation of which the other person beneficially owns, directly or indirectly, voting shares carrying more than 10 per cent of the voting rights attached to all voting shares of the corporation for the time being outstanding;
- (d) both persons are members of a voting trust where the trust relates to shares of a corporation;
- (e) one person is the father, mother, brother, sister, child or spouse of the other person or is another relative who has the same home as the other person; or
- (f) both persons are associates within the meaning of clauses (a) to (e) of the same person.

(4) For the purposes of this Act, the provisions of this Act related to corporations, their control, and the ownership, control and voting of shares apply with necessary modifications in respect of corporations to which Part III of the *Corporations Act* applies.

Corporations  
without share  
capital

R.S.O. 1980.  
c. 95

**2.** This Act does not apply to the following health facilities, persons, places or services:

Application  
of Act

- 1. An office or place in which one or more persons provide services in the course of the practice of a health profession,

R.S.O. 1980,  
c. 197

i. for or in respect of which the only charges made for insured services are for amounts paid or payable by the Plan as defined in the *Health Insurance Act*, and

ii. for or in respect of which no facility fee is requested from or paid by the Province or any person.

2. A service or class of services that is exempt by the regulations.

3. A health facility or class of health facilities that is exempt by the regulations.

4. A person who is or a class of persons that is exempt by the regulations.

Licence  
required

**3.**—(1) No person shall establish or operate an independent health facility except under the authority of a licence issued by the Director.

Charge for  
facility fee

(2) No person shall charge or accept payment of a facility fee in respect of an insured service provided in an independent health facility unless the facility is operated by a person licensed under this Act.

Idem

(3) No person shall charge an insured person a facility fee in respect of an insured service provided in an independent health facility operated by a person licensed under this Act.

Application  
of subs. (2)

(4) Subsection (2) does not apply to prevent a person from charging a facility fee to or accepting payment of a facility fee from a person who is not an insured person.

Director

**4.** The Minister shall appoint an employee of the Ministry to be the Director of Independent Health Facilities.

Request for  
proposals

**5.**—(1) The Minister may request proposals for the establishment and operation of an independent health facility.

Matters to be  
considered

(2) In deciding whether or not to request proposals, the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;



- (c) the need for the service or services in Ontario or any part of Ontario;
- (d) the future need for the service or services in Ontario or any part of Ontario;
- (e) the projected cost in public moneys for the operation of the independent health facility; and
- (f) the availability of public moneys to pay for the operation of the independent health facility.

(3) A request for proposals shall specify,

Contents of  
request

- (a) the service or services to be provided in the independent health facility;
- (b) the locality in which the independent health facility is to be located;
- (c) such other requirements and limitations as the Minister considers relevant; and
- (d) the final date for submission of proposals.

(4) Persons interested in establishing and operating an independent health facility in response to a request for proposals may submit proposals therefor to the Director.

Submission  
of proposals

(5) A proposal shall set out,

Contents of  
proposal

- (a) the business and professional experience of the person submitting the proposal;
- (b) details of the physical nature of the proposed facility;
- (c) the nature of the service or services to be provided in the facility;
- (d) the projected cost for the operation of the facility;
- (e) details of the system that will be established to ensure the monitoring of the results of the service or services to be provided in the facility;
- (f) details of the professional and other staff proposed for the facility;

- (g) such other information as is relevant to the requirements and limitations specified in the request for proposals.

Consideration  
of proposals

(6) The Director shall consider the proposals and may request additional information in respect of any proposal.

Issuance of  
licence

**6.—**(1) Subject to section 8, the Director may issue a licence to a person who has submitted a proposal for the establishment and operation of an independent health facility where the Director is of the opinion,

- (a) that the proposal meets the criteria specified in the request for proposals;
- (b) that the quality and the standards of the independent health facility or of the service or services to be provided in the facility will comply with the regulations or, in the absence of regulations, will conform to the generally accepted quality and standards for the facility and the service or services to be provided in the facility;
- (c) that the person will operate the independent health facility competently and with honesty and integrity; and
- (d) that the person will establish and maintain a system to ensure the monitoring of the results of the service or services provided in the independent health facility.

Discretion

(2) The issuance of a licence to a person who meets the requirements of subsection (1) is discretionary in the Director and, despite a request for proposals or negotiations in respect of a proposal, the Director,

- (a) is not required to issue a licence to any person; and
- (b) may prefer any proposal over other proposals.

Preference to  
non-profit  
facilities,  
Canadian  
licensees

(3) Despite any international treaty or obligation to which Canada is a party or any law implementing such a treaty or obligation and without restricting the generality of subsection (2), the Director shall give preference to proposals that indicate,

- (a) that the independent health facility will be operated on a non-profit basis; and

(b) that the person who has submitted the proposal for the establishment and the operation of the facility is,

(i) a Canadian citizen ordinarily resident in Canada,

(ii) a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Canada, R.S.C. 1985,  
c. I-2

(iii) a corporation controlled, whether through the ownership of voting shares or otherwise, by one or more persons described in subclause (i) or (ii), or

(iv) a corporation controlled, whether through the ownership of voting shares or otherwise, by one or more persons described in subclause (i), (ii) or (iii).

(4) For the purpose of clause (3) (a), an independent health facility is operated on a non-profit basis if the profit derived from the operation of the facility is used exclusively in the further operation of the facility and no part of the profit is payable to, or is otherwise available for, the personal benefit of any person. Non-profit  
basis

(5) The Director may issue a licence subject to such limitations and conditions as the Director considers necessary in the circumstances. Limitations  
and  
conditions

**7.—**(1) A person who operated an independent health facility on the 2nd day of June, 1988 may, within one year after the date on which this section comes into force, submit a proposal for a licence to continue to operate the facility, as if the Minister had requested proposals under subsection 5 (1). Transitional

(2) Subsections 5 (4), (5) and (6) and sections 6, 8 and 9 apply with necessary modifications to a proposal referred to in subsection (1). Idem

(3) Despite section 3, a person who operated an independent health facility on the 2nd day of June, 1988 may continue to operate the facility without a licence and to charge and accept payment from any person of a facility fee in respect of an insured service provided in the facility, Existing  
facilities may  
operate and  
bill directly



- (a) where the person does not submit a proposal under subsection (1), for one year after the date on which this section comes into force;
- (b) where the person submits a proposal and is served with notice that the Director proposes to issue a licence to the person, until the person is issued the licence; or
- (c) where the person submits a proposal and is served with notice that the Director proposes to not issue a licence to the person, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Regulations  
may apply

(4) Any regulation that applies to independent health facilities operated by persons licensed under this Act or to licensees may be made applicable to independent health facilities operated under subsection (3) or to the persons who operate the facilities, as the case may be.

Notice that  
subs. (3)  
does not  
apply

(5) Where the Director has reasonable and probable ground to believe that an independent health facility referred to in subsection (3) is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person, the Director may by a written notice direct the person who operates the facility that subsection (3) does not apply to the facility effective on the date specified in the notice.

Order is final

(6) An order under subsection (5) is final.

Transitional

(7) This section applies with necessary modifications to a person as though the person operated an independent health facility on the 2nd day of June, 1988, if the person, before the coming into force of this section, was operating a health facility and charging fees that were set out in a column denoted by the letter "T" in Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* and if, before this section comes into force, those regulations are amended so that those fees are no longer set out in such a column.

R.S.O. 1980,  
c. 197

Idem

(8) Subsection (3) does not apply to allow a person to charge an insured person a fee, or accept from an insured per-

son payment of a fee, for a service if, before this section comes into force,

- (a) there was a fee for the service set out in a column described in subsection (7); and
- (b) the regulation described in subsection (7) is amended so that a fee for the service is no longer payable under the regulation.

**8.—**(1) Where the Director proposes to issue a licence under subsection 6 (1) or to refuse to issue a licence to any person, the Director shall serve notice of the proposed action on every person who submitted a proposal for a licence. Notice of proposal to refuse licence

(2) A notice under subsection (1) shall inform the person on whom it is served that the person is entitled to, Contents of notice

- (a) written reasons for the proposal if a request is received by the Director within seven days of the receipt by the person of the notice of the proposal, and the person may so require the written reasons; and
- (b) a hearing by the Board if the person mails or delivers, within fifteen days after receipt by the person of the written reasons, a written request and the person may so require the hearing.

(3) Where no person requires a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1). Powers of Director where no hearing

(4) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations. Powers of Board where hearing

(5) For the purposes of subsection (4), the Board may substitute its opinion for that of the Director, but the Board may not direct the Director to do anything that is contrary to the criteria specified in the request for proposals. Idem

(6) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for Extension of time for requiring hearing

applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Minister may  
direct refusal  
to issue  
licence

**9.—(1)** At any time after the Minister requests proposals for the establishment and operation of an independent health facility and before a licence is issued, the Minister may direct the Director in writing to not issue any licence in respect of the request for proposals.

Matters to be  
considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

- (a) the nature of the service or services provided or to be provided in the independent health facility;
- (b) the extent to which the service or services is already available in Ontario or any part of Ontario;
- (c) the need for the service or services in Ontario or any part of Ontario;
- (d) the future need for the service or services in Ontario or any part of Ontario;
- (e) the projected cost in public moneys for the operation of the independent health facility; and
- (f) the availability of public moneys to pay for the operation of the independent health facility.

Director shall  
refuse to  
issue licence

(3) Upon receipt of a direction under subsection (1), the Director shall refuse to issue any licence in respect of the request for proposals and shall give written notice to every person who submitted a proposal of the refusal and of the Minister's direction.

Public notice

(4) Where the Minister issues a direction before the final date for submission of proposals, the Director shall publish notice of the direction in the same manner as the Minister's request for proposals.

No appeal  
from refusal  
to issue  
licence

(5) Section 8 does not apply to a refusal to issue a licence under this section.

Special  
situation

**10.—(1)** Where the Minister is of the opinion that it is essential that an independent health facility for which proposals have been requested be established without delay, and any person has required a hearing by the Board in respect of a proposal by the Director to issue or to refuse to issue a



licence, the Minister may direct the Director in writing to carry out the proposal forthwith.

(2) The Director shall carry out the direction and shall give written notice to the person who required the hearing. Action by Director

(3) The Director's notice shall inform the person of the Minister's direction, of the action to be taken by the Director and of the person's right to proceed with the hearing before the Board. Notice

(4) Section 8 does not apply to prevent the Minister or the Director from acting under this section. Application of s. 8

(5) The Board, in an order under section 8, may require the Director to issue a licence to an applicant despite the issuance of a licence to any other person. Power of Board

**11.**—(1) A licence is not transferable without the consent of the Director. Transfer of licence

(2) In deciding whether to consent to the transfer of a licence, Criteria

(a) the Director shall treat the proposed transferee of the licence as if the proposed transferee were an applicant for a licence and for the purpose subsection 6 (1), other than clause 6 (1) (a), applies with necessary modifications; and

(b) the Director shall apply the principle that consent shall be refused if there are reasonable grounds to believe that money or other consideration, other than the prescribed fee and an amount not exceeding the maximum allowable consideration, has been or will be paid, transferred, accepted or received for the transfer of the licence.

(3) No person shall, for the transfer of a licence, pay, transfer, accept or receive money or other consideration other than the prescribed fee and an amount not exceeding the maximum allowable consideration. Restrictions on consideration for transfers

(4) Every director of a corporation that transfers a licence shall take all reasonable care to ensure that, for the transfer of the licence, no money or other consideration other than the prescribed fee and an amount not exceeding the maximum allowable consideration is paid, transferred, accepted or received. Duty of directors

Limitations  
and  
conditions

(5) In consenting to the transfer of a licence, the Director may attach to the licence such limitations and conditions as the Director considers necessary in the circumstances.

Expiry of  
licence

**12.** Every licence expires on the date specified on the licence, which shall not be later than the fifth anniversary of its issuance or renewal, unless it is revoked or is surrendered to the Director before that date.

Share  
transfer  
R.S.O. 1980,  
c. 466

**13.—(1)** A licensee that is a private company as defined in the *Securities Act* shall not permit an issue or transfer of its voting shares that may result in a person acquiring or increasing an interest affecting its control while it is a licensee unless its licence includes a condition as to the ownership or control of the licensee and such issue or transfer of voting shares would not result in a breach of that condition.

Restrictions  
on consid-  
eration for  
licence in  
share transfer

(2) No person shall pay, transfer, accept or receive, in respect of a transfer of shares of a corporation that is a licensee, money or other consideration that can reasonably be regarded as referable to the licence held by the corporation other than an amount not exceeding the portion of the maximum allowable consideration allocated to the shares as prescribed by the regulations.

Duty of  
corporation  
to notify  
Director

**14.—(1)** A licensee that is a corporation shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

## Idem

(2) Where a corporation has an interest in a licence and there is reasonable ground for belief that an event will occur whereby a person would acquire an interest or increase an interest affecting the control of the corporation while the corporation has an interest in the licence, the corporation shall so notify the Director forthwith.

Statement  
required

(3) The Director annually, in writing, shall direct a corporation that has an interest in a licence to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of voting shares in the corporation, which statement shall contain the information that, in the opinion of the Director, is reasonably necessary to enable the Director to determine,

- (a) what persons, if any, have interests affecting the control of the corporation; and

- (b) what persons, if any, have interests affecting the control of a person mentioned in clause (a) that is a corporation.

(4) The Director may require the information described in subsection (3) to be provided more frequently than annually if, in the opinion of the Director, it is reasonably necessary for the purposes set out in subsection (3). Idem

**15.** A licence shall not be used as security for the payment or performance of an obligation, and any transaction purporting to use a licence as security for the payment or performance of an obligation is void. Licence not to be used as security

**16.—(1)** A licensee shall not enter into a contract that may result in, Contracts

- (a) a change in the beneficial ownership of the licence without a corresponding transfer of the licence; or
- (b) in the case of a licensee that is a corporation, a person acquiring or increasing an interest affecting the control of the corporation while it is a licensee.

(2) Subsection (1) does not apply if the licence includes a condition as to the ownership or control of the licensee and the contract would not result in a breach of the condition. Exception

**17.—(1)** Where the Director is of the opinion that an independent health facility should continue to operate after the expiry, surrender, suspension or revocation of the licence, after the death of the licensee or after the licensee ceases to operate the facility, the Director by a written order may take control of and operate the facility for a period not exceeding one year. Order by Director to take control

(2) Where the Director takes control of and operates an independent health facility under subsection (1), the Director has all the powers of the licensee and the Director may appoint one or more persons to operate the facility and each person so appointed is a representative of the Director. Authority of Director

(3) Where the Director takes control of an independent health facility, the licensee, former licensee or estate of the licensee, as the case may be, Payment for services and compensation for property

- (a) is not entitled to payment for any service that is provided by the facility while the facility is under the control of the Director; and



- (b) is entitled to reasonable compensation from the Crown for the use of property of the licensee, former licensee or estate of the licensee while the facility is under the control of the Director.

Order  
effective  
immediately

- (4) An order under subsection (1) takes effect immediately and is final.

Revocation  
and refusal  
to renew  
licence

**18.—**(1) The Director may revoke, suspend or refuse to renew a licence where,

- (a) the licensee or any member of the licensee's staff or an employee of the licensee is in contravention of this Act or the regulations or any other Act of the Legislature or of the Parliament of Canada or regulation that applies to the independent health facility or to the licensee, any member of the licensee's staff or an employee of the licensee, as the case may be;
- (b) there is a breach of a limitation or condition of the licence;
- (c) any person has made a false statement in the proposal submitted to the Director in respect of the independent health facility;
- (d) any person has made a false statement in the application for renewal of the licence;
- (e) any person has made a false statement in any report, document or other information required to be furnished by this Act or the regulations or any other Act or regulation that applies to the independent health facility;
- (f) any person has, for the transfer of the licence, paid, transferred, accepted or received money or other consideration other than the prescribed fee and an amount not exceeding the maximum allowable consideration;
- (g) there is reasonable ground for belief that the independent health facility is not being or will not be operated in accordance with the law and with honesty and integrity;
- (h) there is reasonable ground for belief that the independent health facility is not being or will not be operated in a responsible manner in accordance

with this Act or the regulations or any other Act or regulation that applies to the facility;

- (i) there is reasonable ground for belief that the independent health facility is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person;
- (j) the licensee has ceased operating the independent health facility for a period of at least six months and is not taking reasonable steps to prepare the facility to re-open;
- (k) the licensee is a corporation described in subsection 13 (1) that has permitted an issue or transfer contrary to that subsection;
- (l) a corporation has failed to make a report or statement to the Director contrary to section 14; or
- (m) the licensee has entered into a contract described in section 16 contrary to that section.

(2) If the Director is of the opinion upon reasonable grounds that the independent health facility is being operated or will be operated in a manner that poses an immediate threat to the health or safety of any person, the Director by a written order may suspend the licence of the facility.

Emergency  
suspension

(3) Despite subsections (4) and (5), an order under subsection (2) takes effect immediately.

Order  
effective  
immediately

(4) The Director shall deliver with the order under subsection (2) notice that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice is served on the licensee, notice in writing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Notice  
requiring  
hearing by  
Board

(5) Subsections 20 (4) and (6) apply with necessary modifications to a suspension under subsection (2).

Powers of  
Board where  
hearing

**19.—**(1) The Minister may direct the Director in writing to not renew the licence.

Minister may  
direct refusal  
to renew  
licence

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

Matters to be  
considered

- (a) the nature of the service or services provided or to be provided in the independent health facility;

- (b) the extent to which the service or services is already available in Ontario or any part of Ontario;
- (c) the need for the service or services in Ontario or any part of Ontario;
- (d) the future need for the service or services in Ontario or any part of Ontario;
- (e) the projected cost in public moneys for the operation of the independent health facility; and
- (f) the availability of public moneys to pay for the operation of the independent health facility.

Notice to  
licensee

(3) Upon receipt of a direction under subsection (1), the Director must give written notice to the licensee at least six months before the expiry of the licence that the licence will not be renewed upon expiry pursuant to the Minister's direction.

Petition to  
Lieutenant  
Governor in  
Council

(4) A licensee may, by petition filed with the Clerk of the Executive Council filed within fifteen days after the notice in subsection (3) has been served on the licensee, request that the Lieutenant Governor in Council revoke the direction of the Minister to not renew the licence.

Powers of  
Lieutenant  
Governor in  
Council

(5) Upon receipt of a petition filed under subsection (4), the Lieutenant Governor in Council shall confirm or revoke the direction of the Minister.

Deemed  
confirmation

(6) If the Lieutenant Governor in Council does not confirm or revoke the direction of the Minister within sixty days after the petition under subsection (4) has been filed, the Lieutenant Governor in Council shall be deemed to have confirmed the direction.

No appeal  
from refusal  
to renew  
licence

(7) Section 20 does not apply to a refusal to renew a licence under this section.

Notice of  
proposal to  
revoke or  
refuse to  
renew licence

**20.**—(1) Where the Director proposes to revoke, suspend or refuse to renew a licence under subsection 18 (1), the Director shall serve notice of the proposed action, together with written reasons therefor, on the licensee.

Notice  
requiring  
hearing by  
Board

(2) A notice under subsection (1) shall inform the licensee that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice under subsection (1) is served on the licensee, notice in writ-



ing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

(3) Where a licensee does not require a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of  
Director  
where no  
hearing

(4) Where a licensee requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Director.

Powers of  
Board where  
hearing

(5) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the retention of the licence and that it would be just and reasonable to give the licensee that opportunity.

Opportunity  
to comply

(6) The Board may extend the time for the giving of notice requiring a hearing by a licensee under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the licensee following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Extension of  
time for  
requiring  
hearing

(7) Where, before the expiry of the licence, a licensee has applied for renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue,

Continuation  
of licence  
pending  
renewal

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Notice re  
consent to  
transfer a  
licence

(8) Subsections (1) to (6) apply with necessary modifications where the Director proposes to refuse to consent to the transfer of a licence and, for the purpose,

- (a) the Director shall serve the notice under subsection (1) upon both the licensee and the proposed transferee; and
- (b) the licensee and the proposed transferee, or either of them, may require the hearing by the Board, but if they each require such a hearing, the Board shall combine the applications into one proceeding.

Parties to  
hearing  
before the  
Board

**21.**—(1) The Director, the person who has required the hearing and any other person the Board may specify are parties to proceedings before the Board under this Act.

Submissions

(2) The Board may permit any person who is not a party before it to make written or oral submissions to the Board and, where it does so, those submissions may be made either personally or through an agent.

Examination  
of  
documentary  
evidence

(3) A party to proceedings shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members  
holding  
hearing not  
to have  
taken part in  
investigation,  
etc.

(4) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or party's representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of  
evidence

(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of  
fact

(6) The findings of fact of the Board following upon a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,  
c. 484

Only  
members at  
hearing to  
participate in  
decision

(7) No member of the Board shall participate in a decision of the Board following upon a hearing unless he or she was

present throughout the hearing, heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2) and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to that person by the Board within a reasonable time after the matter in issue has been finally determined.

Release of  
documentary  
evidence

**22.**—(1) Any party to proceedings before the Board may appeal from its decision or order to the Divisional Court on a question of law alone.

Appeal from  
decision of  
Board

(2) Where any party appeals under subsection (1), the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

Record to be  
filed in court

(3) On an appeal under subsection (1), the Divisional Court may affirm or may rescind the decision of the Board or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Powers of  
court on  
appeal

(4) The decision of the Divisional Court under this section is final.

Final decision

**23.** Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at the person's last known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date.

Service of  
notice

**24.** The Minister may pay all or part of any one or more of the capital costs of an independent health facility, the operating costs of an independent health facility or the costs of the services provided in an independent health facility according to whatever method of payment the Minister may decide upon.

Payment by  
Minister



Appointment  
of inspectors  
by Minister

**25.—**(1) The Minister may appoint in writing one or more persons as inspectors.

Limitation

(2) In an appointment under subsection (1), the Minister may limit the duties or the authority, or both, of an inspector in such manner as the Minister considers necessary or advisable.

Investigation

(3) Where the Director is of the opinion that it is necessary or advisable that an inspection be made of an independent health facility licensed under this Act to ensure that this Act, the regulations and the limitations and conditions of the licence are being complied with, the Director may direct one or more inspectors appointed by the Minister to make the investigation and to report to the Director.

Duty of  
inspector

(4) An inspector appointed by the Minister shall make such inspections as the Director requires under subsection (3) and shall make such reports and interim reports in respect of the inspections as are required by the Director.

Notice to  
Registrar of  
C.P.S.O.

**26.—**(1) Where the Director is of the opinion that there is reasonable ground for belief that there is or has been a contravention of section 3, the Director may give notice to the Registrar of the College.

Idem

(2) Where the Director is of the opinion that there is reasonable ground for belief that the quality and standards of service provided in a health facility operated under subsection 7 (3) do not comply with the regulations or, in the absence of regulations, do not conform to the generally accepted quality and standards for the health facility and the service or services provided in such a health facility, the Director may give notice to the Registrar.

Appointment  
of inspectors  
by Registrar

(3) Upon receipt of a notice under subsection (1) or (2), the Registrar shall appoint in writing one or more persons as inspectors to make the inspection.

Notice by  
inspector

(4) Before making an inspection, an inspector shall give written notice to the person who appears to be in control or management of the health facility.

Progress  
reports

(5) The Registrar shall report to the Director upon the appointment of the inspector or inspectors and, at the request of the Director, upon the progress of the inspection.

Report to  
Registrar

(6) An inspector appointed by the Registrar shall make the inspection and shall make such reports and interim reports in respect of the inspection as are required by the Registrar.

(7) The Registrar shall report the result of the inspection to the Director. Report to Director

(8) The Registrar shall also report the result of the inspection to the Executive Committee or such other committee of the College as the Registrar considers appropriate. Report to College

(9) Reports and interim reports under this section shall be made at such times, in such form, in such detail and with such supporting material as is required by the person or body to whom the report is to be made. Time and form of reports

**27.—**(1) The Registrar may appoint persons in writing as assessors. Appointment of assessors

(2) The Council of the College, or a committee established by the Council acting on the direction of the Council, may appoint persons as assessors. Appointment by committee of College

(3) Where the Director considers it necessary or advisable that assessments be carried out of the quality and the standards of services provided in a health facility referred to in subsection 32 (2), the Director may give notice in writing to the chief administrative officer of the governing, registering or licensing body of a health profession or to the licensee or operator of the health facility. Appointment upon notice

(4) The Director is not required to give notice to or consult with the licensee or operator of the health facility before giving notice to the chief administrative officer of the governing, registering or licensing body of a health profession. Choice of notice

**28.—**(1) Upon receipt of notice under section 27, the chief administrative officer of the governing, registering or licensing body of a health profession shall appoint one or more persons in writing as assessors. Appointment of assessor

(2) The chief administrative officer shall report to the Director upon the officer's appointments of assessors under subsection (1) and upon the assessments made by them. Reports to Director

(3) The chief administrative officer shall make the reports at such times, in such form, in such detail and with such supporting material as is required by the Director. Time and form of reports

**29.—**(1) A notice by the Director to the licensee or operator of a health facility under section 27 shall state that the Director intends to require an assessment of the quality and the standards of services provided in the health facility and Notice to operator or licensee

that the licensee or operator may consult with the Director in respect of the person or persons to be appointed as assessors.

Appointment  
of assessor

(2) Where the Director and the licensee or operator agree upon the person or persons to be appointed, the Director may appoint the person or persons to make the assessment.

Qualifications  
of assessor

(3) An assessor appointed under this section,

- (a) must be a physician if the services are provided by a physician in the health facility; and
- (b) must not be a public servant within the meaning of the *Public Service Act*.

R.S.O. 1980,  
c. 418

Reports

(4) An assessor appointed under this section shall report to the Director and to the Registrar in such form, in such detail, with such supporting material and at such times as the Director or the Registrar, or both, requires.

Notice to a  
chief  
adminis-  
trative officer

(5) If the Director and the licensee or operator do not agree upon the person or persons to be appointed, the Director may give notice to the chief administrative officer of the governing, registering or licensing body of a health profession under section 27.

Powers of  
assessor

**30.**—(1) An assessor, after giving written notice to the licensee or operator of a health facility, for the purposes of assessing the medical care provided to one or more persons in the health facility, may,

- (a) inspect and receive information from medical records or from notes, charts and other material relating to patient care and reproduce and retain copies thereof; and
- (b) interview the licensee or operator and members of the staff of the health facility on matters that relate to the quality and standards of service provided in the health facility.

Notice by  
assessor

(2) A notice under subsection (1) shall, where practicable, state the subject-matter of the interview and the identity, if known, of the person or persons to be interviewed.

Notice by  
licensee or  
operator

(3) A licensee or operator who receives written notice under subsection (1) shall forthwith give written notice to each person who may be interviewed of the subject-matter of the interview.



(4) The notice by the licensee or operator shall inform the person that the person is entitled to be represented by legal counsel. Legal representation

**31.**—(1) It is the function of an assessor to carry out assessments of the quality and the standards of services provided in independent health facilities. Assessment

(2) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an assessor carrying out an assessment of an independent health facility operated by a licensee. Co-operation by licensees

(3) The co-operation required of a licensee includes, Idem

- (a) permitting the assessor to enter and inspect the premises of the independent health facility;
- (b) permitting the assessor to inspect records, including patient records;
- (c) providing to the assessor information requested by the assessor in respect of records, including patient records, or the care of patients in the independent health facility;
- (d) providing the information mentioned in clause (c) in the form requested by the assessor;
- (e) permitting the assessor to make or take and remove samples of any substance on the premises of the independent health facility;
- (f) providing samples mentioned in clause (e) as requested by the assessor; and
- (g) conferring with the assessor when requested to do so by the assessor.

**32.**—(1) An inspector appointed by the Registrar may, at any reasonable time, without a warrant, enter any premises of a health facility to make an inspection. Inspection of health facilities

- (a) in respect of a health facility operated by a person not licensed under this Act, to determine whether there is or has been a contravention of section 3; and
- (b) in respect of a health facility operated under subsection 7 (3) by a person not licensed under this

Act, to ensure that the quality and standards of services provided in the facility comply with the regulations or, in the absence of regulations, conform to the generally accepted quality and standards for the health facility and the service or services provided in such a health facility.

Inspector  
appointed by  
Minister

(2) An inspector appointed by the Minister may, at any reasonable time, without a warrant, enter any premises of an independent health facility operated by a person licensed under this Act, to make an inspection to ensure that this Act and the regulations, and the limitations and conditions, if any, of the licence, are being complied with.

Search of  
premises  
other than  
health  
facilities

(3) Where an inspector has reasonable ground to believe that there is in any premises, other than a health facility, any thing that there is reasonable ground to believe will afford evidence as to the commission of an offence under this Act or in relation to the establishment or operation of an independent health facility licensed under this Act, the inspector may apply under section 142 of the *Provincial Offences Act* for a warrant to enter and search the premises.

R.S.O. 1980,  
c. 400

Private  
residence

(4) Subsection (1) is not authority to enter a private residence without the consent of an occupier, except under the authority of a warrant under section 33.

Exempt  
health  
facilities

(5) Subsection (1) is authority to enter a health facility that is, under section 2, otherwise exempt from the application of this Act.

Powers on  
inspection

(6) Upon an inspection under this section, the inspector,

- (a) has the right to inspect the premises and the operations carried out on the premises;
- (b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment, patient and drug records and any other records that are relevant for the purposes of the inspection, regardless of the form or medium in which such records are kept, but if such books, documents, correspondence or records are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;
- (c) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment

issued by the Minister, any material referred to in clause (b) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that the material is promptly returned to the person apparently in charge of the premises from which the material was removed;

- (d) has the right, at any reasonable time, to make and take or require to be made or taken samples of any substance on the premises;
- (e) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, any sample referred to in clause (d) that relates to the purpose of the inspection for the purpose of making an analysis thereof; and
- (f) may question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination.

(7) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an inspector carrying out an inspection of an independent health facility operated by a licensee.

Co-operation  
by licensees

**33.—**(1) A provincial judge or justice of the peace may issue a warrant in the form prescribed by the regulations where the judge or justice is satisfied upon application by an inspector, on information upon oath, that there is reasonable ground for believing that it is necessary to do anything set out in clause 32 (6) (a), (b), (c), (d) or (e) in respect of a health facility and,

Warrant to  
enter and  
inspect

- (a) no occupier is present to grant access to a premises that is locked or otherwise inaccessible;
- (b) no occupier is present to grant access to a private residence; or
- (c) an occupier of the premises,
  - (i) has denied an inspector entry to the premises,
  - (ii) has instructed an inspector to leave the premises,
  - (iii) has obstructed an inspector,



(iv) has refused to produce to an inspector any material referred to in clause 32 (6) (b), or

(v) has refused to make or take a sample as required in clause 32 (6) (d).

Authority  
given by  
warrant

(2) A warrant issued under subsection (1) authorizes the inspector to whom it is issued, by force if necessary, and together with such police officer or officers as the inspector calls upon for assistance, to do anything set out in clause 32 (6) (a), (b), (c), (d) or (e) and specified in the warrant.

Execution of  
warrant

(3) A warrant issued under subsection (1) shall be executed at reasonable times.

Expiry of  
warrant

(4) A warrant issued under subsection (1) shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application  
without  
notice

(5) A provincial judge or justice of the peace may receive and consider an application for a warrant under subsection (1) without notice to and in the absence of the owner or occupier of the premises.

Admissibility  
of copies

**34.**—(1) Copies of material removed from premises under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the material of which they are copies.

Analysis  
report as  
evidence

(2) A certificate or report of an analysis of a sample removed from premises under this Act that purports to be signed by the laboratory technician who carried out the analysis shall be received in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate or report without proof of the signature or position of the person appearing to have signed the certificate or report.

Obstruction  
of inspector

**35.** No person shall obstruct an inspector or withhold or conceal from an inspector any book, document, correspondence, record or thing relevant to the subject-matter of an inspection.

Definitions

**36.**—(1) In this section,

R.S.O. 1980,  
c. 197

“Board” means the Health Services Appeal Board under the *Health Insurance Act*;

“Plan” means the Ontario Health Insurance Plan referred to in section 10 of the *Health Insurance Act*.

(2) Where the Director is satisfied that a person has paid a facility fee all or part of which was charged in contravention of section 3, the Director may direct that the amount of the facility fee that was charged in contravention of section 3 be paid to the person out of the Plan.

Plan to  
reimburse  
facility fee

(3) The person who charged the facility fee referred to in subsection (2) is indebted to the Plan for an amount equal to the amount paid out of the Plan under subsection (2) and the administrative charge prescribed by the regulations.

Fee is debt  
to Plan

(4) If the person who charged the facility fee referred to in subsection (2) is a person who submits accounts directly to the Plan, then, subject to subsections (5), (6) and (8), part or all of the money owed to the Plan under subsection (3) may be recovered by set-off against any money payable to the person by the Plan.

Set-off  
against Plan

(5) The Director shall serve notice of the proposed set-off referred to in subsection (4), together with written reasons therefor, on the person who is indebted to the Plan.

Notice of  
proposed  
set-off

(6) A notice under subsection (5) shall inform the person that he or she is entitled to a hearing by the Board if the person mails or delivers, within fifteen days after the notice under subsection (5) is served on the person, notice in writing requiring a hearing to the Director and the Board, and the person may so require a hearing.

Notice  
requiring  
hearing by  
Board

(7) Where a person does not require a hearing by the Board in accordance with subsection (6), the proposed set-off stated in the notice under subsection (5) may be carried out.

Powers  
where no  
hearing

(8) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct that the proposed set-off be carried out or refrained from being carried out, and for such purposes, the Board may substitute its opinion for that of the Director.

Powers of  
Board where  
hearing

(9) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Extension of  
time for  
requiring  
hearing

ss. 21, 22  
apply

(10) Sections 21 and 22 apply with necessary modifications to a hearing and decision by the Board under this section.

Disclosure of  
information  
R.S.O. 1980,  
c. 197

(11) Despite subsection 44 (1) of the *Health Insurance Act*, the General Manager may furnish to,

- (a) a member of the Board;
- (b) the person who was charged or who paid the facility fee;
- (c) the person who charged or accepted payment of the facility fee and counsel for the person;
- (d) any person engaged in the administration of this Act or the regulations or any proceedings under this Act or the regulations;
- (e) any other person with the consent of the person to whom the services were provided in respect of which the facility fee was charged,

information pertaining to the nature of the services provided, the date or dates on which the services were provided and for whom, the name and address of the person who provided the services, the amounts paid or payable by the Plan for such services, and the persons to whom the fee for the insured service and the facility fee were paid or are payable, for the purpose of this section.

Definition

**37.—**(1) In this section, “confidential information” means information obtained by a person employed in the administration of this Act or making an assessment or inspection under this Act in the course of the person’s employment, assessment or inspection and that relates to a patient or former patient of a health facility.

Confiden-  
tiality of  
information

(2) No person shall communicate confidential information to any person except in accordance with subsection (4).

Application

(3) Subsection (2) applies to any person whether or not the person is or was employed in the administration of this Act or is or was an inspector or assessor under this Act.

Communi-  
cation of  
confidential  
information

(4) A person employed in the administration of this Act, an assessor or inspector under this Act or any person who obtains confidential information pursuant to this subsection may communicate confidential information,



- (a) in connection with the administration or enforcement of any Act or any proceedings under any Act;
- (b) in connection with matters relating to professional disciplinary proceedings, to a statutory body governing a health profession;
- (c) to the person's counsel; or
- (d) with the consent of the patient or former patient to whom the information relates.

(5) No person employed in the administration of this Act or who made an inspection or assessment under this Act shall be required to give testimony in a civil action or proceeding with respect to any information obtained in the course of the person's employment, assessment or inspection except in a proceeding under an Act or a regulation under an Act.

Testimony by  
officials in  
civil suits

(6) A provincial offences court may exclude the public from proceedings to enforce any Act if the court is of the opinion that confidential information may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of that information in the interests of any patient or former patient to whom it relates outweighs the desirability of adhering to the principle that hearings be open to the public.

Closed  
proceedings

**38.** No action or other proceeding for damages shall be commenced against an inspector, an assessor, the Director, the Registrar, the Council of the College or a committee established by the Council, the Board, or a member of the Council, the committee or the Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or the regulations, or for any neglect or default in the performance or exercise in good faith of such power or duty.

Immunity

**39.—(1)** Every person who contravenes section 3, 11, 35 or 37 is guilty of an offence.

Offences

(2) Every person who contravenes section 13, 14, 15 or 16 is guilty of an offence.

Corporate  
offences

(3) Every person who contravenes the regulations is guilty of an offence.

Breach of  
regulations

(4) Every person who is guilty of an offence under this section is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more

Penalty

than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction.

Corporation

(5) Where a corporation is convicted of an offence under this section, the maximum penalty that may be imposed for every day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction, and not as provided in subsection (4).

Penalty

(6) Every person who is guilty of an offence under this section for contravention of section 11 or subsection 13 (2) is liable on conviction, in addition to any fine under subsection (4) or (5), to a fine not exceeding the amount of money or the value of the consideration paid, transferred, accepted or received in contravention of section 11 or subsection 13 (2).

Restraining order

**40.**—(1) In addition to any other remedy and to any penalty imposed by law, a contravention of section 3 may be restrained by action at the instance of the Attorney General.

Restraining order upon conviction

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the action that constitutes the offence.

Annual Report

**41.** The Minister shall annually prepare a report on the implementation of this Act and submit it to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Regulations

**42.**—(1) The Lieutenant Governor in Council may make regulations,

1. exempting any health facility or class of health facility from the application of this Act or the regulations or any provision thereof;
2. governing the process for submitting proposals;
3. governing applications for renewals of licences;
4. prescribing forms and providing for their use;
5. prescribing fees for licences, for transfers of licences and for renewals of licences;
6. classifying health facilities or independent health facilities;

7. respecting and governing the care, treatment and services provided in independent health facilities or any class thereof;
8. prescribing and governing the quality and the standards of services provided in independent health facilities or any class thereof;
9. prescribing and governing the quality and the standards of independent health facilities or any class thereof;
10. prescribing and governing the requirements for staff and employees of independent health facilities or any class thereof;
11. prescribing and governing the construction, establishment, location, equipment, maintenance and repair of, additions and alterations to, and operations of independent health facilities or any class thereof;
12. prescribing the books, records and accounts that shall be kept by licensees including their form and content and the place or places where they shall be kept;
13. requiring the accounts of independent health facilities to be audited and requiring the licensees to furnish such information or accounts as may be required by the Director;
14. prescribing and governing the records that shall be kept by licensees with respect to the care and treatment of patients of the independent health facility;
15. governing the reports and returns that shall be made to the Director by licensees;
16. requiring and governing the system or systems that shall be kept by licensees to monitor the results of the services provided in independent health facilities or any class thereof;
17. governing access to patient or drug records and specifying persons who may have access to such records;
18. prescribing other duties of assessors;



19. prescribing other duties of inspectors;
20. classifying services;
21. exempting any service or class of service from the application of this Act or the regulations or any provision thereof;
22. prescribing services, classes of services and operating costs that are not part of an insured service and that do not support, assist and are not a necessary adjunct, or any of them, to an insured service;
23. prescribing services, classes of services and operating costs that are part of the insured service;
24. prescribing any services, any classes of services and any operating costs that are not part of an insured service and that support, assist and are a necessary adjunct, or any of them, to the insured service;
25. prescribing the maximum amount a person may charge for services or operating costs prescribed under paragraph 24;
26. prescribing conditions that shall attach to licences of independent health facilities or any class or classes thereof;
27. prescribing administrative charges for the purposes of section 36;
28. governing and restricting the disposition and transfer of the assets of independent health facilities;
29. prescribing the maximum allowable consideration in relation to a licence or prescribing a method for determining the maximum allowable consideration;
30. prescribing the allocation of the maximum allowable consideration in relation to a licence held by a corporation among the shares of the corporation or prescribing a method for determining the allocation;
31. making any regulation made under paragraphs 1 to 30 applicable to independent health facilities operated under subsection 7 (3) or to the persons who operate the facilities;

32. exempting any person who operates a health facility that is approved, licenced or designated under any other Act or any class of such persons from the application of this Act or the regulations or any provision thereof.

(2) A regulation may be general or particular in its application. Scope of regulations

(3) In a regulation made under paragraph 29 or 30, the Lieutenant Governor in Council may delegate the determination of any matter to the Minister or persons the Minister may designate in writing. Delegation in regulations

#### COMPLEMENTARY AMENDMENT

**43.—(1) Subsection 51 (1) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:**

(ja) prescribing constituent elements that are part of insured services rendered by physicians or by practitioners;

(jb) prescribing constituent elements that shall be deemed not to be part of insured services rendered by physicians or by practitioners.

**(2) Section 51 of the said Act is amended by adding thereto the following subsection:**

(4) The Lieutenant Governor in Council may make regulations under clause (1) (j) prescribing services that are insured services without prescribing any amounts payable by the Plan for those services. Services designated without prescribing amounts payable

**(3) The said section 51 is further amended by adding thereto the following subsection:**

(5) A regulation may prescribe an amount payable by the Plan for an insured service rendered in a hospital that has been approved under the *Public Hospitals Act* without prescribing an amount payable if the service is rendered in a health facility operated by a person to whom subsection 7 (7) of the *Independent Health Facilities Act*, 1989 applies. Fees related to independent health facilities  
R.S.O. 1980, c. 410  
1989, c. 59

Commence-  
ment

**44.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**45.** The short title of this Act is the *Independent Health Facilities Act, 1989*.



## CHAPTER 60

### An Act to revise the Veterinarians Act

*Assented to December 6th, 1989*

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

R.S.O. 1980,  
c. 196

“Board” means the Health Disciplines Board under the *Health Disciplines Act*;

“by-laws” means the by-laws made under this Act;

“certificate of accreditation” means a certificate of accreditation issued under this Act to establish or operate a veterinary facility;

“College” means the College of Veterinarians of Ontario;

“Council” means the Council of the College;

“drug” means drug as defined in Part VI of the *Health Disciplines Act*;

“impaired”, in relation to a person, means suffering from a physical or mental condition or disorder of a nature and extent that adversely affects the person’s ability to practice veterinary medicine;

“licence” means a licence to engage in the practice of veterinary medicine issued under this Act;

“Minister” means the Minister of Agriculture and Food;

“practice of veterinary medicine” includes the practice of dentistry, obstetrics including ova and embryo transfer, and surgery, in relation to an animal other than a human being;

“Registrar” means the Registrar of the College;

“regulations” means the regulations made under this Act;

“veterinary facility” means a building, land or vehicle or any combination of them used or intended to be used as a place in or from which to engage in the practice of veterinary medicine.

Hearings and  
submissions  
R.S.O. 1980,  
c. 484

(2) Despite the *Statutory Powers Procedure Act*, no board, committee, person or group of persons shall be required to hold a hearing or to afford to any person an opportunity to appear or to make submissions before making a decision or proposal, giving a direction or otherwise disposing of a matter under this Act except to the extent that a hearing or an opportunity to appear or to make submissions is specifically required by this Act.

**2.** The Ontario Veterinary Association, a body corporate, Name  
is continued as a corporation without share capital under the  
name of "College of Veterinarians of Ontario".

**3.—(1)** The principal object of the College is to regulate Objects  
the practice of veterinary medicine and to govern its members  
in accordance with this Act, the regulations and the by-laws in  
order that the public interest may be served and protected.

**(2)** For the purpose of carrying out its principal object, the Idem  
College has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and standards of practice for the practice of veterinary medicine.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of the College.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the College under any Act.

**(3)** For the purpose of carrying out its objects, the College Capacity and powers of College  
has the capacity and the powers of a natural person.

**4.—(1)** The council of the Ontario Veterinary Association Council  
is continued as the Council of the College and shall be the  
governing body and board of directors of the College and  
shall manage and administer its affairs.

**(2)** The Council shall be composed of, Composition

- (a) not fewer than nine and not more than fifteen persons who are members of the College and are elected by the members of the College in the number and manner provided by by-law of the Council; and
- (b) not fewer than three and not more than five persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council.



## Remuneration of lay members

(3) The persons appointed under clause (2) (b) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.

## Term of office

(4) The term of an appointment under clause (2) (b) must not exceed three years.

## Reappointment

(5) A person whose appointment under clause (2) (b) expires is eligible for reappointment but no person shall be appointed and reappointed for more than six consecutive years.

## Qualifications

(6) Every member of the College who,

- (a) practises or resides in Ontario;
- (b) is the holder of a licence that is not limited to the practice of veterinary medicine for educational purposes only;
- (c) is not in default of an annual fee prescribed by the regulations; and
- (d) is not in default of filing a return required by the regulations,

is qualified to vote at an election of members of the Council for the constituency to which the member of the College belongs.

## Officers

(7) The Council shall elect annually a president and one or more vice-presidents of the College from among the elected members of the Council.

## Registrar and staff

(8) The Council shall appoint a Registrar, and the Executive Committee may appoint such other persons as are from time to time necessary or desirable in the opinion of the Executive Committee to perform the work of the College.

## Quorum

(9) A majority of the members of the Council constitutes a quorum.

## Vacancies

(10) Where one or more vacancies occur in the membership of the Council, the members remaining in office constitute the Council so long as their number is not fewer than a quorum.

## Continuation of council members

(11) The members of the council of the Ontario Veterinary Association who were in office immediately before the coming into force of this Act shall continue in office until the expira-

tion of their terms or until their offices otherwise become vacant.

**5.—**(1) Every person who holds a licence is a member of the College subject to any conditions and limitations to which the licence is subject. Membership

(2) A member may resign his or her membership by filing with the Registrar a resignation in writing and the member's licence is thereupon cancelled. Resignation of membership

(3) The Registrar may cancel a licence for non-payment of any fee prescribed by the regulations or for failure to file a return required by the regulations after giving the member at least two months notice of the default and intention to cancel. Cancellation for default of fees

(4) A person whose licence is cancelled, revoked or suspended remains subject to the continuing jurisdiction of the College in respect of, Continuing jurisdiction

- (a) an investigation or disciplinary action arising out of his or her conduct while a member; and
- (b) an inquiry or proceeding related to whether the person is impaired.

**6.** In addition to the Minister's other powers and duties under this Act, the Minister may, Powers of Minister

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures;
- (d) request the Council to make, amend or revoke regulations respecting any matter under section 7 or the standards for veterinary facilities established under section 8.

**7.—**(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations with respect to the following matters: Regulations

1. Prescribing classes of licences and governing the qualifications and requirements for the issuance of licences or any class thereof and prescribing the conditions and limitations thereof.
2. Respecting any matter ancillary to the provisions of this Act with regard to the issuance, cancellation, suspension and revocation of licences.
3. Respecting any matter ancillary to the provisions of this Act with regard to the issuance, renewal, suspension and revocation of certificates of accreditation.
4. Prescribing classes of certificates of accreditation and governing the qualifications and requirements for the issuance and renewal of certificates of accreditation or any class thereof and prescribing the conditions and limitations thereof.
5. Providing for the designation of members of the College as specialists, prescribing the qualifications and requirements for designation as a specialist, providing for the suspension or revocation of such a designation and for the regulation and prohibition of the use of the designation by members of the College.
6. Governing the use of names and designations in the practice of veterinary medicine by members of the College.
7. Authorizing entries in, and the form of maintenance of, registers of members and former members of the College and directories of veterinary facilities and providing for the issuance of certificates of standing by the Registrar.
8. Prescribing and governing standards of practice for the profession.
9. Regulating the compounding, dispensing and sale of drugs by members of the College, and the containers and labelling of drugs compounded, dispensed or sold by members, and prescribing the records that shall be kept in respect of such compounding, dispensing and sale.



10. Establishing a special category of membership for retired members and determining the rights, privileges, duties and obligations of such members.
11. Respecting the promotion or advertising of the practice of veterinary medicine.
12. Prohibiting the practice of veterinary medicine where there is a conflict of interest and defining conflict of interest for the purpose.
13. Defining professional misconduct for the purposes of this Act.
14. Respecting the reporting and publication of decisions in disciplinary matters.
15. Requiring the payment of annual fees by members of the College, fees for processing applications, licensing, certificates, examinations and inspections, including penalties for late payment, prompt payment discounts and interest on late payments and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof.
16. Requiring the making of returns of information by members of the College in respect of names, addresses, telephone numbers, professional associates, partners, employees and professional activities.
17. Providing for the compilation of statistical information on the supply, distribution, professional liability insurance and professional activities of members of the College and requiring members to provide the information necessary to compile such statistics.
18. Requiring and providing for the inspection of veterinary facilities and of the records kept by members of the College in connection with the practice of veterinary medicine.
19. Authorizing the communication of material that comes to a person's knowledge in the course of duties, employment, examination, review or investigation to specified classes of persons or for specified purposes.

20. Respecting the duties and authority of the Registrar.
21. Prescribing and requiring the making and keeping of records by members of the College in respect of the practice of veterinary medicine.
22. Exempting any member of the College from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.
23. Providing that any form required under this Act be in a form approved by the Registrar.

## Application

(2) A regulation made under subsection (1) may be general or particular in its application.

## Adoption of accreditation

(3) For the purpose of prescribing the qualifications and requirements for the issuance of licences or the issuance and renewal of certificates of accreditation, the Council, in a regulation under subsection (1) or a standard under subsection 8 (1), may adopt as its own the recognition or accreditation granted by any organization specified by the Council.

## Distribution of regulations

(4) The Council shall,

- (a) forward a copy of each regulation made under subsection (1) to each member of the College; and
- (b) keep a copy of each regulation made under subsection (1) available for public inspection in the office of the College.

## Regulations by Lieutenant Governor in Council

(5) Where the Minister requests in writing under clause 6 (d) that the Council make, amend or revoke a regulation or standard and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make regulations respecting the subject-matter set out in the request.

## Conflicting provisions

(6) In cases of conflict, a regulation made under subsection (5) prevails over a regulation or standard made under subsection (1) or 8 (1) respectively.

## Standards for veterinary facilities

**8.—(1)** The Council may establish standards for veterinary facilities not inconsistent with this Act and the regulations which must be met in order to qualify for the issuance or renewal of a certificate of accreditation or any class thereof.

(2) The Council shall forward a copy of the standards established under subsection (1) to the Minister and to each member of the College and shall keep a copy available for public inspection in the office of the College.

Distribution  
of standards

**9.**—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing, may pass by-laws respecting the following matters:

By-laws

1. Prescribing the seal and other insignia of the College and providing for their use.
2. Providing for the execution of documents by the College.
3. Respecting banking and finance.
4. Fixing the financial year of the College and providing for the audit of the accounts and transactions of the College.
5. Prescribing the number of vice-presidents of the College, prescribing procedures for the election of the president and vice-presidents and for the filling of vacancies in those offices.
6. Respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council.
7. Respecting the calling, holding and conducting of meetings of the membership of the College.
8. Providing for the remuneration of members of the Council and members of committees other than members appointed by the Lieutenant Governor in Council, and providing for payment of necessary expenses of the Council and committees in the conduct of their business.
9. Providing for the appointment, composition, powers, duties and quorums of additional or special committees.
10. Providing for the appointment of persons to make investigations for the purposes of this Act.



11. Providing procedures for the making, amending and revoking of by-laws.
12. Respecting management of the property of the College.
13. Respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities.
14. Respecting the borrowing of money by the College and the giving of security therefor.
15. Respecting membership of the College in other organizations the objects of which are not inconsistent with and are complementary to those of the College, the payment of annual assessments and provision for representatives at meetings.
16. Delegating to the Executive Committee the powers and duties set out in the by-laws, but this paragraph does not authorize the delegation of the power to make, amend or revoke a regulation or a by-law.
17. Fixing the number of members to be elected to the Council under clause 4 (2) (a) and defining constituencies, and prescribing the number of representatives.
18. Respecting and governing the qualifications, nomination, election and term or terms of office of the members to be elected to the Council, and controverted elections.
19. Prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council.

Signed by-laws and resolutions

(2) A by-law or resolution of the Council signed by a majority of the members of the Council is as valid as if passed at a meeting of the Council held for that purpose.

Confirmation of by-laws

(3) A by-law passed by the Council is not effective until confirmed by the members of the College at a meeting or by means of a vote conducted by mail.

Distribution of by-laws

(4) The Council shall,

- (a) forward a copy of each by-law confirmed under subsection (3) to the Minister and to each member of the College; and
- (b) keep a copy of each by-law confirmed under subsection (3) available for public inspection in the office of the College.

(5) Subsection (3) does not apply to a by-law passed within four months after this Act comes into force. Application of subs. (3)

**10.—**(1) The following committees are hereby established: Establishment of committees

- 1. Executive Committee.
- 2. Accreditation Committee.
- 3. Registration Committee.
- 4. Complaints Committee.
- 5. Discipline Committee.

(2) The Council shall appoint the committees referred to in subsection (1) and may establish and appoint such other committees as it considers necessary. Idem

(3) Where one or more vacancies occur in the membership of a committee, the members remaining in office constitute the committee so long as their number is not fewer than the prescribed quorum. Vacancies

(4) The Council shall name one member of each committee to chair the committee. Person to chair

(5) No person shall be appointed and reappointed to the same committee for more than six consecutive years. Term

**11.—**(1) No person shall engage in the practice of veterinary medicine or hold himself, herself or itself out as engaging in the practice of veterinary medicine unless the person is the holder of a licence. Licence required

(2) Subsection (1) does not apply to prevent a person, Exceptions

- (a) from rendering first aid or temporary assistance in an emergency without fee;
- (b) from treating an animal if the person is the owner of the animal, is a member of the household of the

owner of the animal or is employed for general agricultural or domestic work by the owner of the animal;

- (c) from taking blood samples;
- (d) from preventing or treating fish and invertebrate diseases;
- (e) from collecting or using semen under the authority of a licence issued under the *Artificial Insemination of Live Stock Act*;
- (f) from collecting or transporting ova and embryos of animals other than mammals.

R.S.O. 1980,  
c. 29

Idem,  
student

(3) Subsection (1) does not apply to a student of veterinary medicine to the extent that the student is engaging in the undergraduate curriculum of studies at the Ontario Veterinary College of the University of Guelph.

Interpretation  
of owner

(4) For the purpose of clause (2) (b), a person is not the owner of an animal if the person buys the animal, treats it and resells it or intended to resell it to either the person who sold it to him or her or to that person's nominee.

Proof of  
practice

(5) For the purposes of this section, proof of the performance of one act in the practice of veterinary medicine on one occasion is sufficient to establish engaging in the practice of veterinary medicine.

Application  
of Part VI of  
R.S.O. 1980,  
c. 196

(6) Part VI of the *Health Disciplines Act* does not apply to prevent a person who holds a licence from compounding, dispensing or selling drugs in the course of engaging in the practice of veterinary medicine.

Application  
of  
R.S.O. 1980,  
c. 248

(7) The *Live Stock Medicines Act* does not apply to prevent a person who holds a licence from selling a drug in the course of engaging in the practice of veterinary medicine to an owner of live stock for the treatment of live stock.

Executive  
Committee

**12.—**(1) The Executive Committee shall be composed of five members of the Council, including,

- (a) the president and one or two vice-presidents of the College; and
- (b) not more than three other members of the Council of whom one shall be a member of the Council



appointed to the Council by the Lieutenant Governor in Council.

(2) Three members of the Executive Committee constitute a quorum. Quorum

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Act. Functions

(4) Subject to ratification by the Council at its next meeting, the Executive Committee, between meetings of the Council, may perform any other function of the Council that, in the opinion of the Executive Committee, must be performed immediately. Other functions

(5) Subsection (4) does not apply to authorize the Executive Committee to make, amend or revoke a regulation, a by-law or a standard described under subsection 8 (1). Limitation

**13.—**(1) The Registration Committee shall be composed of five persons of whom, Registration Committee

- (a) not fewer than three shall be members of the Council elected to the Council by the members of the College;
- (b) one shall be a member of the Council appointed to the Council by the Lieutenant Governor in Council; and
- (c) one may be a member of the College who is not a member of the Council.

(2) Three members of the Registration Committee constitute a quorum. Quorum

**14.—**(1) Subject to subsections (2) and (3), the Registrar shall issue a licence to any person who applies therefor in accordance with the regulations and who meets the qualifications and requirements prescribed by the regulations. Issuance of licence

(2) The Registrar shall refuse to issue a licence where, in the opinion of the Registrar, Grounds for refusal

- (a) the applicant does not meet the qualifications and requirements for the issuance of the licence;
- (b) the past conduct of the applicant affords reasonable ground for believing that the applicant will not

engage in the practice of veterinary medicine with honesty and integrity; or

- (c) there is reasonable ground for believing that the applicant is impaired.

Referral to  
Registration  
Committee

(3) The Registrar, on his or her own initiative, may refer and on the request of the applicant shall refer the application to the Registration Committee for a determination as to any of the matters mentioned in clauses (2) (a), (b) and (c).

Power of  
Registration  
Committee

(4) The Registration Committee shall determine the eligibility of applicants for licences referred to the Registration Committee under subsection (3) and may in any such case require an applicant to obtain such additional experience, education or training as the Registration Committee specifies.

Exemption

(5) The Registration Committee may exempt an applicant from compliance with any qualification or requirement for a licence.

Directions to  
Registrar

(6) The Registration Committee, after considering an application for a licence, may direct the Registrar,

- (a) to issue the licence;
- (b) to refuse to issue the licence; or
- (c) to issue the licence subject to the conditions and limitations the Registration Committee specifies.

Certificate of  
accreditation  
required

**15.** No person shall establish or operate a veterinary facility except under and in accordance with a certificate of accreditation.

Accreditation  
Committee

**16.—(1)** The Accreditation Committee shall be composed of five persons of whom,

- (a) not fewer than three shall be members of the Council elected to the Council by the members of the College;
- (b) one shall be a member of the Council appointed to the Council by the Lieutenant Governor in Council; and
- (c) one may be a member of the College who is not a member of the Council.

(2) Three members of the Accreditation Committee constitute a quorum. Quorum

**17.—**(1) Subject to subsections (2) and (3), the Registrar shall issue or renew a certificate of accreditation upon the application of a member of the College who applies therefor if the applicant and the veterinary facility meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the proposed veterinary facility. Issuance of certificate of accreditation

(2) The Registrar shall refuse to issue or renew a certificate of accreditation where, in the opinion of the Registrar, the applicant or the veterinary facility does not meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the proposed veterinary facility. Grounds for refusal

(3) The Registrar, on his or her own initiative, may refer and on the request of the applicant shall refer the application to the Accreditation Committee for a determination as to whether or not the applicant or the facility or both meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the proposed veterinary facility. Referral to Accreditation Committee

(4) The Accreditation Committee may exempt an applicant or veterinary facility from compliance with any qualification, requirement or standard for a certificate of accreditation. Exemption

(5) The Accreditation Committee shall determine the eligibility of applicants and facilities for certificates of accreditation that are referred to the Accreditation Committee under subsection (3) and, after considering an application for the issuance or renewal of a certificate of accreditation, may direct the Registrar, Directions to Registrar

- (a) to issue or to renew the certificate of accreditation;
- (b) to refuse to issue or to renew the certificate of accreditation; or
- (c) to issue or to renew the certificate of accreditation subject to the conditions and limitations the Accreditation Committee specifies.

**18.—**(1) Where,

Hearing by Board

- (a) the Registration Committee proposes to direct the Registrar to refuse to issue a licence or proposes to direct the Registrar to issue a licence subject to conditions or limitations; or



- (b) the Accreditation Committee proposes to direct the Registrar to refuse to issue or to refuse to renew a certificate of accreditation, or proposes to direct the Registrar to issue or to renew a certificate of accreditation subject to conditions or limitations,

the Registrar on behalf of the committee shall serve notice of the proposal, together with written reasons therefor, on the applicant and shall send a copy of the proposal and the written reasons to the Board.

Exception

(2) Subsection (1) does not apply in respect of a proposal to refuse to issue a licence where the applicant previously held a licence that was suspended or revoked as a result of a decision of the Discipline Committee, a decision of the Registration Committee or a decision of the council of the Ontario Veterinary Association under a predecessor of this Act.

Right to a hearing or review

(3) The applicant is entitled to a hearing by the Board, or to a review by the Board of his or her application and documentary evidence in support thereof without oral evidence, if the applicant mails or delivers within fifteen days after the notice under subsection (1) is served on the applicant, notice in writing to the Board requiring the hearing or the review by the Board, as the applicant specifies.

Notice of right to hearing or review

(4) The notice under subsection (1) shall inform the applicant of the right to a hearing or review by the Board as set out in subsection (3).

Powers of committee where no hearing or review

(5) Where an applicant does not require a hearing or review by the Board in accordance with subsection (3), the Board shall so notify the committee making the proposal and the committee may carry out the proposal stated in its notice under subsection (1).

Hearing by Board

(6) Where an applicant requires a hearing by the Board in accordance with subsection (3), the Board shall appoint a time for, give notice of and hold the hearing.

Review by Board

(7) Where an applicant requires a review by the Board in accordance with subsection (3), the Board shall review the application and documentary evidence in support thereof without oral evidence.

Findings of fact

(8) The findings of fact of the Board pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

(9) Three members of the Board constitute a quorum for the purpose of a proceeding under this section.

Quorum

(10) The Board shall, after the hearing or review in respect of a licence,

Powers of  
Board re  
licence

- (a) confirm the proposed decision of the Registration Committee;
- (b) require the Registration Committee to direct the Registrar to issue a licence of the appropriate class subject to such conditions and limitations as the Board considers appropriate in cases where the Board finds that the applicant meets the qualifications and requirements for registration and that the Committee has exercised its powers improperly; or
- (c) refer the matter back to the Registration Committee for further consideration, and the Board may make such recommendations as it considers appropriate in the circumstances.

(11) The Board shall, after the hearing or review in respect of a certificate of accreditation,

Powers of  
Board re  
certificate of  
accreditation

- (a) confirm the proposed decision of the Accreditation Committee;
- (b) require the Accreditation Committee to direct the Registrar to issue or renew a certificate of accreditation for the appropriate class of veterinary facility subject to such conditions and limitations as the Board considers appropriate in cases where the Board finds that the applicant and the veterinary facility meet the qualifications, requirements and standards for the issuance or renewal of the certificate of accreditation and that the Committee has exercised its powers improperly; or
- (c) refer the matter back to the Accreditation Committee for further consideration, and the Board may make such recommendations as it considers appropriate in the circumstances.

(12) The Board may extend the time for the giving of notice requiring a hearing by an applicant under this section before or after the expiration of such time where it is satisfied that there are apparent grounds for granting relief to the applicant and that there are reasonable grounds for applying

Extension of  
time for  
requiring  
hearing

for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Parties

(13) The College and the applicant who has required the hearing are parties to proceedings before the Board under this section.

Prohibitions on publication and identification

(14) Section 29, which relates to proceedings of the Discipline Committee, applies with necessary modifications to a hearing by the Board under this section.

Examination of documentary evidence

(15) A party to a hearing under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members holding hearing or review not to have taken part in investigation, etc.

(16) Members of the Board holding a hearing or review shall not have taken part before the hearing or review in any investigation or consideration of the subject-matter of the hearing or review other than at a previous hearing or review of the Board and shall not communicate directly or indirectly in relation to the subject-matter of the hearing or review with any person or with any party or any party's representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(17) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies of a transcript of the oral evidence shall be furnished upon the same terms as in the Supreme Court.

Only members at hearing to participate in decision

(18) No member of the Board shall participate in a decision of the Board following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.

Release of documentary evidence

(19) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Registers

**19.—**(1) The Registrar shall maintain one or more registers in which is entered,

- (a) the name of every person to whom a licence is issued;



- (b) any designation of a member of the College as a specialist and any withdrawal of recognition of the member's specialist status;
- (c) any conditions or limitations imposed on a licence by a committee;
- (d) any revocation, suspension, cancellation or termination of a licence;
- (e) the fact and amount of a fine imposed by the Discipline Committee and the fact of a reprimand by the Discipline Committee, unless the Discipline Committee directs that no entry be made;
- (f) where an entry results from a decision of a committee, the name of the committee that made the decision and any finding of the committee resulting in the entry;
- (g) the date of the decision or order that results in an entry under this subsection; and
- (h) any other information authorized to be entered by the regulations.

(2) The Registrar shall maintain one or more directories in which is entered the name of every person who is the holder of a certificate of accreditation identifying the location and class of the veterinary facility for which the certificate of accreditation is issued, the conditions and limitations attached to the certificate of accreditation, the date of expiry of the certificate of accreditation, every revocation or suspension of a certificate of accreditation and any other information authorized to be entered by the regulations.

Directories

(3) Any person has the right, during normal business hours, to inspect the registers and directories maintained by the Registrar.

Inspection

(4) The Registrar may maintain the registers and directories mentioned in subsections (1) and (2) in the form of books or may maintain them in any electronic or other medium that provides a visual display of recorded information.

Form of registers and directories

**20.** Every person who is a member, other than a life member, of the Ontario Veterinary Association immediately before this Act comes into force shall be deemed to be the holder of a licence that is subject to the terms, conditions and

Continuation of memberships

limitations that applied to the person's registration, and is a member of the College.

Continuation  
of certificates  
of accredi-  
tation

**21.** Every certificate of accreditation issued under the *Veterinarians Act*, being chapter 522 of the Revised Statutes of Ontario, 1980, and in force immediately before this Act comes into force shall be deemed to be a certificate of accreditation issued under this Act that is subject to the terms, conditions and limitations that applied to it immediately before the coming into force of this Act.

Referral of  
certificate of  
accreditation

**22.—(1)** The Registrar may refer a certificate of accreditation to the Accreditation Committee where the Registrar is of the opinion that there is reasonable ground for believing that,

- (a) the holder of the certificate of accreditation or the veterinary facility in respect of which the certificate of accreditation was issued has ceased to meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the issuance or renewal of the certificate of accreditation;
- (b) the veterinary facility in respect of which the certificate of accreditation was issued is being used or has been used in contravention of a term, condition or limitation of the certificate of accreditation; or
- (c) the veterinary facility in respect of which the certificate of accreditation was issued is being used or has been used as a veterinary facility of a class other than the class for which the certificate of accreditation was issued or renewed.

Hearing

(2) The Accreditation Committee shall appoint a time for, give notice of and hold a hearing to determine the allegation in respect of the certificate of accreditation or the holder thereof.

Powers of  
Accreditation  
Committee

(3) Where the Accreditation Committee finds that an allegation mentioned in clause (1) (a), (b) or (c) is valid, the Accreditation Committee may, by order,

- (a) revoke the certificate of accreditation;
- (b) suspend the certificate of accreditation for a stated period not exceeding two years;
- (c) suspend the certificate of accreditation pending the demonstration, in such manner as the Committee

specifies, of compliance with such standards as are specified by the Committee;

- (d) change the class of veterinary facility authorized by the certificate of accreditation; or
- (e) impose such conditions and limitations or such further conditions and limitations on the certificate of accreditation as are specified by the Committee,

or any combination thereof.

(4) Subsections 28 (5) to (15) and section 29, which relate to proceedings before the Discipline Committee, apply with necessary modifications to proceedings before the Accreditation Committee under subsection (2). Procedures

(5) The College and the holder of the certificate of accreditation in respect of which the hearing is held are parties to the hearing before the Accreditation Committee under subsection (2). Parties

(6) The jurisdiction of the Discipline Committee is not affected by the commencement of proceedings or the making of an order under this section. Other proceedings

**23.—**(1) The Complaints Committee shall be composed of not fewer than three and not more than ten persons of whom, Complaints Committee

- (a) at least one is a member of the Council appointed to the Council by the Lieutenant Governor in Council; and
- (b) the others are members of the College, of whom at least one, but not the majority, is a member of the Council.

(2) A member of the Complaints Committee who takes part in the consideration or investigation of a complaint regarding the conduct of a member or former member of the College is not eligible to take part as a member of the Discipline Committee in proceedings before the Discipline Committee in respect of the same conduct of the member or former member of the College. Eligibility

(3) A majority of the members of the Complaints Committee, one of whom is a person appointed to the Council by the Lieutenant Governor in Council, constitutes a quorum. Quorum



Duties of  
Complaints  
Committee

**24.—**(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct of a member or former member of the College, but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Registrar and the member or former member whose conduct is being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member or former member may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

## Idem

(2) The Complaints Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or, for the purposes of section 33, be brought to the attention of the Registrar;
- (b) direct that the matter not be referred to the Discipline Committee or brought to the attention of the Registrar under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws.

Decision and  
reasons

(3) The Complaints Committee shall give its decision in writing to the Registrar and, where the decision is made under clause (2) (b) or (c), its reasons therefor.

## Advice

(4) The Complaints Committee may require the member or former member whose conduct was considered or investigated by the Committee to appear before the Committee and the Committee may provide the member or former member with advice in respect of the practice of veterinary medicine.

## Complaints

**25.—**(1) Where the Complaints Committee has made a disposition of a complaint respecting a member or former member of the College under section 24, the Registrar shall send to the member or former member and to the complainant, by prepaid first class mail, a copy of the written decision

made by the Committee including reasons therefor, if any, together with notice advising of the right of review under subsection (2).

(2) A complainant or the member or former member of the College complained against who is not satisfied with the decision made by the Complaints Committee disposing of a complaint, except a decision to refer a matter to the Discipline Committee or to bring a matter to the attention of the Registrar, may within twenty days of the mailing of the written decision request the Board to review the decision.

Review of  
complaints

(3) Upon receipt of a request under subsection (2), the Board shall require the Registrar to transmit to the Board within fifteen days of the Board's request a record of the investigation and all such documents and things upon which the decision was based and the Board shall review the decision after giving the complainant an opportunity to state his or her complaint and the member or former member an opportunity to state his or her answer thereto personally, by an agent or in writing.

Idem

(4) Despite the *Statutory Powers Procedure Act*, a review by the Board shall be closed to the public, but if the member or former member whose conduct or actions are the subject-matter of the review requests otherwise by a notice delivered to the Board before the day fixed for the review, the Board shall conduct the review in public except where the Board is of the opinion that,

Closed to the  
public  
R.S.O. 1980,  
c. 484

- (a) matters involving public security may be disclosed;  
or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the review in public.

(5) Subsections 29 (1), (2) and (3), which relate to proceedings of the Discipline Committee, apply with necessary modifications to a review by the Board under this section.

Publication  
prohibited

**26.** Where a complaint respecting a member or former member of the College has not been disposed of by the Complaints Committee within 120 days after the complaint is made, the Board upon application therefor may require the Complaints Committee to make an investigation and, where the investigation of the complaint has not been undertaken, completed and reported on to the Board by the Committee within 120 days after the Board's request, the Board shall

Investigation  
of complaint  
by Board

undertake such investigation and possesses all the powers of investigation of the Complaints Committee under this Act.

Powers of  
Board after  
review or  
investigation  
of complaint

**27.**—(1) The Board may, after review or investigation of a complaint under section 25 or 26,

- (a) confirm the decision, if any, made by the Complaints Committee;
- (b) make such recommendations to the Complaints Committee as the Board considers appropriate; or
- (c) require the Complaints Committee to take such action or proceeding as the Committee is authorized to undertake under this Act.

Board  
quorum

(2) Three members of the Board constitute a quorum for the purposes of an investigation or review of a complaint.

Decision and  
reasons

(3) The Board shall give its decision and reasons therefor in writing to the complainant and the member of the College complained against.

Discipline  
Committee

**28.**—(1) The Discipline Committee shall be composed of ten members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

Quorum and  
votes

(2) Three members of the Discipline Committee, one of whom is a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions of the Committee require the vote of a majority of the members of the Committee present at the meeting.

Panels

(3) The Discipline Committee may sit in two or more panels simultaneously so long as a quorum of the Committee is present in each panel.

Assignment

(4) The person chairing the Discipline Committee shall assign the members of the Committee to its panels and may change an assignment at any time.

Expiry of  
member's  
term of  
office

(5) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a person sitting for the hearing expires or is terminated, other than for cause, before the proceeding has been disposed of but after evidence has been heard, the person shall be deemed to remain a member of the Committee for the purpose of completing the proceeding in the same



manner as if the person's term of office had not expired or been terminated.

(6) Where the Discipline Committee commences a hearing and any member thereof becomes unable to continue to act, the remaining members may complete the hearing despite the absence of the member or members and may render a decision as effectually as if all members of the Committee were present throughout the hearing, despite the absence of a quorum of the Committee.

Disability of member

(7) The findings of fact of the Discipline Committee pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Findings of facts

R.S.O. 1980, c. 484

(8) A party to a hearing before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Examination of documentary evidence

(9) A party to a hearing before the Discipline Committee who intends to call an expert witness at the hearing shall, at least ten days before the commencement of the hearing, deliver to the other party a report, signed by the expert, setting out his or her name, address and qualifications and the substance of his or her proposed testimony.

Delivery of expert witness report

(10) An expert witness shall not testify at a hearing before the Discipline Committee unless subsection (9) has been complied with, except,

Exception for expert testimony

- (a) with the permission of the Committee;
- (b) with the consent of the other party; or
- (c) to give reply evidence.

(11) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing other than as a member of the Council or the Executive Committee considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or any party's representative except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice from an adviser independent from the

Members holding hearing not to have taken part in investigation, etc.

parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of  
evidence

(12) The oral evidence taken before the Discipline Committee at a hearing shall be recorded and, if so required, copies of a transcript of the oral evidence shall be furnished upon the same terms as in the Supreme Court.

Only  
members at  
hearing to  
participate in  
decision

(13) No member of the Discipline Committee shall participate in a decision of the Committee following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.

Release of  
documentary  
evidence

(14) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Practice and  
procedure

R.S.O. 1980,  
c. 484

(15) The Discipline Committee may determine its own practice and procedure in relation to hearings and may, subject to section 28 of the *Statutory Powers Procedure Act*, make rules governing such practice and procedure and the exercise of its powers in relation thereto that are not inconsistent with this Act and may prescribe such forms as are considered advisable.

Parties

(16) The College and the member or former member of the College whose conduct is being investigated are parties to the proceedings before the Discipline Committee.

Publication  
prohibited

**29.—**(1) No person shall,

- (a) take or attempt to take a photograph, motion picture, audio or video recording or other record capable of producing visual or aural representations by any means,
  - (i) of any person at a hearing of the Discipline Committee,
  - (ii) of any person entering or leaving a hearing of the Discipline Committee, or
  - (iii) of any person in the building in which a hearing of the Discipline Committee is held, where there is reasonable ground for believing that the person is there for the purpose of attending the hearing; or

- (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio or video recording or record taken in contravention of clause (a).

(2) Subsection (1) does not apply to,

Exception

- (a) a person unobtrusively making handwritten notes or sketches at a hearing;
- (b) a solicitor or party unobtrusively making an audio recording at a hearing that is used only as a substitute for handwritten notes for the purposes of the hearing;
- (c) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee for any purpose of the hearing; or
- (d) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee and the consent of the parties and of the witnesses to be recorded, for such educational or instructional purposes as the Committee approves.

(3) No person shall publish by any means the name of a member or former member of the College who is a party to a hearing by the Discipline Committee or any information which could reasonably serve to identify the member or former member,

Identification prohibited

- (a) unless the member or former member consents to such publication; or
- (b) until the Discipline Committee completes the hearing and makes a decision that is required by subsection 19 (1) to be entered in a register.

(4) Despite subsection (3), the Registrar may notify any person who, in the Registrar's opinion, is interested in a Discipline Committee hearing into the conduct of a member or former member of the College of the time and place of the hearing and, in so doing, may identify the member or former member.

Exception

**30.—**(1) The Council or the Executive Committee, by resolution, may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct

Reference to Discipline Committee



or serious neglect on the part of a member or former member of the College specified in the resolution.

Duties of  
Discipline  
Committee

(2) The Discipline Committee shall,

- (a) when so directed by the Council, the Executive Committee or the Complaints Committee, hear and determine allegations of professional misconduct or serious neglect against a member or former member of the College;
- (b) hear and determine matters referred to it under section 37; and
- (c) perform such other duties as are assigned to it by the Council.

Professional  
misconduct

(3) A member or former member of the College shall be found guilty of professional misconduct by the Discipline Committee if,

- (a) the member or former member has been found guilty of an offence relevant to the suitability to practise veterinary medicine, upon proof of such finding;
- (b) the member's or former member's rights or privileges related to the practice of veterinary medicine under an Act of the Parliament of Canada or of the Legislature of Ontario, other than this Act, or the regulations thereunder, have been restricted or withdrawn, unless by the request of the member or former member, upon proof thereof;
- (c) there has been a finding of professional misconduct or serious neglect, or a like finding, against the member or former member by a veterinary authority in another jurisdiction, upon proof of such finding; or
- (d) the member or former member has been guilty in the opinion of the Committee of professional misconduct as defined in the regulations.

Serious  
neglect

(4) A member or former member of the College shall be found guilty of serious neglect by the Discipline Committee if the member or former member has displayed in his or her professional care of an animal a lack of knowledge, skill or judgment or disregard for the welfare of the animal of a nature or to an extent that demonstrates the member or for-

mer member is unfit to engage in the practice of veterinary medicine or is fit to engage in the practice of veterinary medicine only subject to the conditions and limitations imposed by the Discipline Committee.

(5) Where the Discipline Committee finds a member or former member of the College guilty of professional misconduct or serious neglect, it may by order, Powers of Discipline Committee

- (a) revoke the licence of the member;
- (b) withdraw recognition of the specialist status of the member;
- (c) suspend the licence of the member or suspend recognition of the specialist status of the member, or both, for a stated period or pending the demonstration of such facts as are specified by the Committee;
- (d) impose such conditions and limitations upon the licence of the member for such period of time as is specified by the Committee or pending the demonstration of such facts as are specified by the Committee;
- (e) impose such fine as the Committee considers appropriate, to a maximum of \$5,000, to be paid by the member or former member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) reprimand the member or former member;
- (g) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee shall order that the College reimburse the member or former member of the College for his or her costs or such portion thereof as the Committee fixes. Costs

(7) Where the Discipline Committee imposes a fine or reprimands a member or former member, the Committee may direct that the fact and amount of the fine or the fact of the reprimand not be entered in a register required to be kept under subsection 19 (1). Register entries

Publication  
and service  
of decision of  
Discipline  
Committee

**31.**—(1) Where the Discipline Committee finds a member or former member of the College guilty of professional misconduct or serious neglect,

- (a) the Registrar shall publish the finding, with or without the reasons therefor, in a publication of the College; and
- (b) the Registrar shall serve a copy of the decision upon the person, if any, complaining in respect of the conduct or actions of the member or former member.

When name  
is published

(2) If the finding of the Discipline Committee is required by subsection 19 (1) to be recorded in a register, the Registrar shall include the name of the member or former member in the publication required under clause (1) (a).

When name  
is not  
published

(3) If the Discipline Committee directs that no entry be made in a register, the Registrar shall not include the name of the member or former member in the publication required under clause (1) (a).

Stay of  
decision on  
appeal,  
serious  
neglect

**32.**—(1) Where the Discipline Committee revokes or suspends a licence, withdraws or suspends recognition of specialist status or imposes conditions or limitations upon a licence on the ground of serious neglect, the decision takes effect immediately even if an appeal is taken from the decision, unless the court to which the appeal is taken otherwise orders.

Stay of  
decision on  
appeal,  
professional  
misconduct

(2) Where the Discipline Committee revokes or suspends a licence, withdraws or suspends recognition of specialist status or imposes conditions or limitations upon a licence on the ground of professional misconduct, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Definition

**33.**—(1) In this section, “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection (2).

Board of  
inquiry

(2) Where the Registrar receives information leading the Registrar to believe that a member of the College may be impaired, the Registrar shall make such inquiry as he or she considers appropriate and report to the Executive Committee which may, upon notice to the member of the College, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council.



(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member of the College to submit to physical and mental examinations by such qualified persons as the board of inquiry designates, but not to more than one examination in each area of medical specialty and if the member of the College refuses or fails to submit to such examinations, the board of inquiry may order that the member's licence be suspended until he or she complies.

Examination

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any report obtained under subsection (3) to the member of the College about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of whether or not the member is impaired becomes final.

Hearing by  
Registration  
Committee

(5) The College, the member of the College being investigated and any other person specified by the Registration Committee are parties to a hearing before the Registration Committee under this section.

Parties

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his or her case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment.

Medical  
evidence

(7) The report required under subsection (6) is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Idem

(8) The Registration Committee shall, after the hearing,

Powers of  
Registration  
Committee

- (a) make a finding as to whether or not the member of the College is impaired; and
- (b) where the member of the College is found to be impaired, by order,
  - (i) revoke the member's licence,
  - (ii) suspend the member's licence either indefinitely or pending the demonstration of such facts as the Committee specifies, or

- (iii) impose such conditions and limitations upon the member's licence as the Committee considers appropriate.

Procedures

(9) Subsections 28 (5) to (15) and 29 (1), (2) and (3), which relate to proceedings of the Discipline Committee, apply with necessary modifications to proceedings of the Registration Committee under this section.

Closed to the public  
R.S.O. 1980,  
c. 484

(10) Despite the *Statutory Powers Procedure Act*, a hearing by the Registration Committee under this section shall be closed to the public but, if the member of the College who is the subject-matter of the hearing requests otherwise by a notice delivered to the Registration Committee before the day fixed for the hearing, the Registration Committee shall conduct the hearing in public except where,

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

Continuing jurisdiction over former member

(11) Subsections (1) to (10) apply with necessary modifications to an inquiry or hearing into whether or not a former member of the College was impaired when he or she was a member of the College, and for such purposes the board of inquiry or Registration Committee, as the case may be, may provide that the revocation or suspension of a licence or the imposition of conditions or limitations upon a licence take effect at the same time as or immediately after an existing revocation or suspension.

Stay of decision on appeal

**34.** Where the Registration Committee revokes, suspends or imposes conditions or limitations upon the licence of a member of the College on the ground that the member is impaired, the decision takes effect immediately even if an appeal is taken from the decision, unless the court to which the appeal is taken otherwise orders.

Appeal to court

**35.—(1)** A party to,

- (a) a proceeding before the Discipline Committee under section 30;
- (b) a proceeding before the Registration Committee under section 33;

- (c) a proceeding before the Accreditation Committee under section 22;
- (d) a hearing by the Board in respect of a proposal by the Registration Committee related to the issuance of a licence or the imposition of conditions or limitations on a licence; or
- (e) a hearing by the Board in respect of a proposal by the Accreditation Committee related to the issuance or renewal of a certificate of accreditation or the imposition of conditions or limitations on a certificate of accreditation,

may appeal to the Divisional Court from the decision or order of the committee or the Board.

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of a reasonable administrative fee therefor, the Registrar or the Executive Secretary of the Board, as the case requires, shall furnish the party with a certified copy of the record of the proceedings.

Certified  
copy of  
record

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Board or the committee appealed from and may exercise all powers of the Board or the committee appealed from to take any action which the Board or the committee appealed from may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the Board or the committee appealed from or the court may refer the matter back to the Board or the committee appealed from for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Powers of  
court on  
appeal

**36.**—(1) Where the Registrar believes on reasonable ground that a member or former member of the College has committed an act of professional misconduct or serious neglect or that there is cause to refuse to issue or renew or to suspend or revoke a certificate of accreditation, the Registrar, with the approval of the Executive Committee, by order may appoint one or more persons to investigate whether such act has occurred or whether there is such cause, and the person or persons appointed shall report the results of the investigation to the Registrar.

Registrar's  
investigation

(2) For purposes relevant to the subject-matter of an investigation under this section, a person appointed to make an investigation may inquire into and examine the practice of the member or former member in respect of whom the investiga-

Powers of  
investigator



tion is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of the member or former member, make reasonable inquiries of any person and examine documents and things relevant to the subject-matter of the investigation.

Co-operation  
with  
investigator

(3) Every member and former member of the College shall co-operate fully with a person appointed to make an investigation into his or her practice.

Order by  
justice of the  
peace

(4) Where a justice of the peace is satisfied on evidence upon oath that the Registrar had grounds for appointing and by order has appointed one or more persons to make an investigation, the justice may, whether or not an investigation has been made or attempted under subsection (2), issue a warrant authorizing the person or persons making the investigation and named in the warrant, to enter any premises in which the member or former member of the College in respect of whom the investigation is being made has engaged in the practice of veterinary medicine or maintained records, to search for any documents or things relevant to the subject-matter of the investigation.

Authority to  
use force

(5) A warrant issued under subsection (4) authorizes the person or persons named in the warrant to carry out the warrant by force if necessary and together with such police officers as are called upon for assistance.

Execution of  
warrant

(6) A warrant issued under subsection (4) shall specify the hours and days during which it may be executed.

Expiry of  
warrant

(7) A warrant issued under subsection (4) shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application  
without  
notice

(8) A justice of the peace may receive and consider an application for a warrant under subsection (4) without notice to and in the absence of the member or former member of the College whose practice is being investigated.

Removal of  
documents  
and things

(9) Any person making an investigation under this section may, upon giving a receipt therefor, remove any documents or things examined under this section relating to the member or former member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies or extracts and shall promptly return such documents or things to the member or former member whose practice is being investigated.

(10) Any copy or extract made as provided in subsection (9) and certified to be a true copy or extract by the person who made it is admissible in evidence to the same extent as, and has the same evidentiary value as, the document or thing of which it is a copy or extract.

Admissibility  
of copies

(11) The Registrar shall report the results of the investigation to the Council or such committee as the Registrar considers appropriate.

Report of  
Registrar

**37.—**(1) A person whose licence has been revoked for cause under this Act, or whose registration has been cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence, but the application shall not be made sooner than two years after the revocation or cancellation or one year after any prior application for issuance of the licence.

Application  
for licence  
after  
revocation

(2) A person whose licence has been suspended for cause under this Act, or whose registration has been suspended for cause under a predecessor of this Act, for more than one year or for other than a specific period, may apply in writing to the Registrar for the removal of the suspension, but the application shall not be made sooner than one year after the commencement of the suspension or one year after any prior application for the removal of the suspension.

Removal of  
suspension

(3) A person to whose licence terms, conditions or limitations have been attached for cause under this Act, or under a predecessor of this Act, may apply in writing to the Registrar for removal or alteration of the terms, conditions or limitations, but the application shall not be made sooner than one year after the commencement of the terms, conditions or limitations or one year after any prior application for removal or alteration of the terms, conditions or limitations.

Variation of  
licence  
restrictions

(4) Subsection (3) does not apply to a person whose licence is the subject of conditions or limitations imposed as a result of a proposal or decision of the Registration Committee under clause 14 (6) (c).

Exemptions

(5) The Registrar shall refer an application under subsection (1), (2) or (3) to the committee that ordered the revocation, suspension, condition or limitation, as the case may be, and the committee shall hold a hearing respecting the application.

Referral to  
committee

(6) Where the council of the Ontario Veterinary Association ordered the cancellation, suspension, term or condition under a predecessor of this Act, the Registrar shall refer the

Idem, orders  
under  
predecessor  
Act



application under subsection (1), (2) or (3) to the committee which, under this Act, would have jurisdiction over the subject-matter that resulted in the cancellation, suspension, term or condition and the committee shall hold a hearing respecting the application.

Hearing by  
Registration  
Committee

(7) Subsections 28 (5) to (15) and 29 (1), (2) and (3), which relate to hearings by the Discipline Committee, and subsection 33 (10), which relates to hearings by the Registration Committee into whether or not a member is impaired, apply with necessary modifications to proceedings of the Registration Committee under this section.

Hearing by  
Discipline  
Committee

(8) The provisions of this Act which relate to proceedings of the Discipline Committee apply to proceedings of the Discipline Committee under this section.

Parties

(9) The applicant and the College are parties to a hearing under subsection (5) or (6).

Powers of  
committee

(10) The committee shall, after the hearing under subsection (5) or (6), report its decision and reasons to the parties and direct the Registrar,

- (a) to issue the licence;
- (b) to refuse to issue the licence;
- (c) to issue the licence subject to the conditions and limitations the committee specifies;
- (d) to remove the suspension of the licence;
- (e) to refuse to remove the suspension of the licence;
- (f) to remove or alter any of the terms, conditions or limitations attached to the licence; or
- (g) to refuse to remove or alter any of the terms, conditions or limitations attached to the licence.

Confiden-  
tiality

**38.—**(1) Every person engaged in the administration of this Act, including any person making an investigation under section 36, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, examination, review or investigation and shall not communicate any such matters to any other person except,



- (a) as may be permitted by the regulations or required in connection with the administration of this Act and the regulations and by-laws, or any proceeding under this Act or the regulations;
- (b) to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any document or thing in any action or proceeding with regard to information obtained in the course of his or her duties, employment, examination, review or investigation except in a proceeding under this Act or the regulations. Testimony in civil action

(3) For the purposes of subsections (1) and (2), the Board, each member of the Board and each member of the staff of the Board shall be deemed to be a person engaged in the administration of this Act. Board

**39.—**(1) Where it appears to the College that any person does not comply with any provision of this Act or the regulations, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing the person to comply with the provision, and upon the application the judge may make the order or such other order as the judge thinks fit. Order directing compliance

(2) An appeal lies to the Divisional Court from an order made under subsection (1). Appeal

**40.—**(1) Every person who contravenes section 11 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$15,000 and for each subsequent offence to a fine of not more than \$30,000. Penalties

(2) Every person who is not a holder of a licence and who, Idem, use of titles

- (a) uses the title “veterinarian” or “veterinary surgeon” or an abbreviation or variation thereof as an occupational or business designation; or
- (b) uses a term, title or description that will lead to the belief that the person may engage in the practice of veterinary medicine,

is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000.

Idem,  
publication

(3) Every person who contravenes subsection 29 (1) or (3) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$20,000.

Corporation

(4) Where a corporation is convicted of an offence under subsection (1), (2) or (3), the maximum fine that may be imposed is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (1), (2) or (3).

Offence,  
director,  
officer, etc.,  
of  
corporation

(5) Where a corporation is convicted of an offence under subsection (1), (2) or (3),

(a) each director of the corporation; and

(b) each officer, employee or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is guilty of an offence unless he or she proves, on the balance of probabilities, that he or she took all reasonable care to prevent the commission of the offence.

Idem,  
penalty

(6) Every person convicted of an offence under subsection (5) is liable on conviction to a fine of not more than \$15,000 on a first conviction and not more than \$30,000 on each subsequent conviction.

Limitation

(7) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3) or (5) after two years after the date on which the offence was, or is alleged to have been, committed.

Falsification  
of documents

**41.—**(1) Any person who makes or causes to be made a wilful falsification in a matter relating to a register or directory or issues a false licence, certificate of accreditation or document with respect to the issuance of a licence or certificate of accreditation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Offences for  
false  
representation

(2) Every person who wilfully procures or attempts to procure the issuance of a licence or a certificate of accreditation under this Act by knowingly making a false representation or declaration or by making a fraudulent representation or decla-



ration, either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

(3) Proceedings to obtain a conviction for an offence under subsection (1) or (2) shall not be commenced after the expiration of one year after the date on which the offence was, or is alleged to have been, committed.

Limitation  
period

**42.** Where licensing or acting under and in accordance with a certificate of accreditation under this Act is required to permit the lawful doing of an act or thing, if in any prosecution it is proven that the defendant has done the act or thing, the burden of proving that he or she was so licensed or that he or she acted under and in accordance with a certificate of accreditation under this Act rests upon the defendant.

Onus of  
proof  
respecting  
licensing

**43.—(1)** A notice or document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or by mail.

Service of  
notice or  
document

(2) Where a notice or document under this Act or the regulations is sent to a person by mail addressed to the person at the last address of the person in the records of the College, there is a rebuttable presumption that the notice or document is delivered to the person on the fifth day after the day of mailing.

Idem

**44.** Any statement containing information from the records required to be kept by the Registrar under this Act and purporting to be certified by the Registrar under the seal of the College is admissible in evidence in all courts and tribunals as proof in the absence of evidence to the contrary of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal.

Registrar's  
certificate as  
evidence

**45.—(1)** No action or other proceeding for damages shall be instituted against the Board, the College, the Council, a committee of the College or a member of the Board, the Council or a committee of the College, or an officer, employee, agent or appointee of the Board or of the College for any act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Immunity

(2) Every member of the Council or a committee of the College and every officer and employee of the College, and their heirs, executors and administrators, and estate and effects, respectively, shall from time to time and at all times,

Councillor  
indemnified  
in suits  
respecting  
duties of  
office



be indemnified and saved harmless out of the funds of the College, from and against,

- (a) all costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action or proceeding brought or commenced against him or her in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his or her office; and
- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs thereof,

except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

Limitation of  
action

**46.** Proceedings shall not be commenced against a member of the College for damages arising from the provision of a service that is within the practice of veterinary medicine after one year from the date when the person commencing the action knew or ought to have known the fact or facts upon which the allegations are based.

Application  
of  
R.S.O. 1980,  
c. 95

**47.—(1)** The *Corporations Act* does not apply in respect of the College except for the following sections of that Act which apply with necessary modifications in respect of the College:

1. Section 81 (liability for wages).
2. Section 94 (auditors) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
3. Subsection 95 (1) (auditor's qualifications) and, for the purpose, the subsection shall be deemed not to include,
  - i. the exception as provided in subsection 95 (2), and
  - ii. the reference to an affiliated company.
4. Section 96 (auditor's functions).
5. Subsection 97 (1), exclusive of clause 97 (1) (b), (auditor's report) and, for the purpose, the College shall be deemed to be a private company.

6. Subsection 97 (2) (designation of statements).
7. Subsection 97 (3) (auditor's report).
8. Section 122 (liability of members).
9. Section 276 (holding of land) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
10. Section 280 (making contracts).
11. Section 281 (power of attorney).
12. Section 282 (authentication of documents) except in respect of information from the records required to be kept by the Registrar.
13. Section 292 (validity of acts of directors).
14. Section 293 (annual meetings).
15. Section 297 (directions by a court as to holding a meeting).
16. Section 299 (minutes of meetings).
17. Section 302 (books of account).
18. Section 303 (untrue entries) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
19. Section 304 (place of keeping and inspection of records) and, for the purpose,
  - i. the section shall be deemed not to refer to sections 41 (register of transfers) and 43 (registers of transfers) of that Act, and
  - ii. the Minister shall be deemed to be the Minister referred to in the section.
20. Section 305 (inspection of records) and, for the purpose, the section shall be deemed not to refer to creditors and to refer to section 41 of that Act.
21. Section 310 (investigations and audits).

22. Section 329 (removal of proceedings into the Supreme Court).
23. Section 330 (appeals).
24. Section 331 (untrue statements) and, for the purpose,
  - i. the section shall be deemed not to refer to regulations made under that Act, and
  - ii. the Minister shall be deemed to be the Minister referred to in the section and the Deputy Minister of the Ministry presided over by the Minister under this Act shall be deemed to be the Deputy Minister referred to in the section.
25. Section 333 (orders by court) and, for the purpose, the section shall be deemed not to refer to creditors.

## Interpretation

(2) For the purposes of subsection (1), a member of the College shall be deemed to be a shareholder and a member of the Council shall be deemed to be a director.

Non-application of  
R.S.O. 1980,  
c. 96

(3) The *Corporations Information Act* does not apply in respect of the College.

## Repeal

**48.**—(1) The *Veterinarians Act*, being chapter 522 of the Revised Statutes of Ontario, 1980, is repealed.

## Idem

(2) Any reference in any Act or regulation to a veterinarian as a member of the Ontario Veterinary Association under the *Veterinarians Act* shall be deemed to be a reference to a member of the College under this Act.

Commence-  
ment

**49.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

## Short title

**50.** The short title of this Act is the *Veterinarians Act*, 1989.



## CHAPTER 61

### An Act to repeal the Brucellosis Act

*Assented to December 6th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Brucellosis Act*, being chapter 50 of the Revised Statutes of Ontario, 1980, is repealed. Repeal
2. All agreements made between the Minister of Agriculture and Food and veterinarians under subsection 3 (2) of the *Brucellosis Act* are void. Agreements void
3. The Minister of Agriculture and Food may transfer to the Department of Agriculture (Canada) records and information acquired in the administration of the *Brucellosis Act*. Disposal of records
4. This Act comes into force on the day it receives Royal Assent. Commencement
5. The short title of this Act is the *Brucellosis Repeal Act*, 1989. Short title



## CHAPTER 62

### An Act to amend the Mining Act

*Assented to December 6th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Paragraph 1 of section 1 of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

1. “anniversary date”, when referring to a mining claim, means the date that occurs at annual intervals after the recording of a mining claim, or such other date as results from the application of subsection 79 (2).

**(2) Paragraphs 4 and 5 of the said section 1 are repealed and the following substituted therefor:**

4. “Crown land” does not include,
  - i. land, the surface rights, mining rights or the mining and surface rights of which are under lease or licence of occupation from the Crown,
  - ii. land in the actual use or occupation of the Crown, the Crown in right of Canada, or of a department of the Government of Canada or a ministry of the Government of Ontario,
  - iii. land the use of which is withdrawn or set apart or appropriated for a public purpose, or
  - iv. land held by a ministry of the Government of Ontario;
5. “Deputy Minister” means the Deputy Minister of Mines.

**(3) Paragraph 6 of the said section 1 is repealed.**



**(4) Paragraph 7 of the said section 1 is repealed and the following substituted therefor:**

7. "holder", when referring to the holder of an unpatented mining claim, a boring permit or a licence of occupation issued under this Act, means the holder of record.

**(5) Paragraph 9 of the said section 1 is repealed and the following substituted therefor:**

9. "inspector" includes a geologist on the staff of the Ministry and any other officer or agent designated by the Minister to carry out an inspection or investigation of the mining industry.

**(6) Paragraph 11 of the said section 1 is repealed and the following substituted therefor:**

11. "licensee" means a person holding a prospector's licence issued under this Act or a renewal thereof.

**(7) Paragraphs 14, 15 and 16 of the said section 1 are repealed and the following substituted therefor:**

14. "mine", when used as a noun, means any opening or excavation in, or working of the ground, for the purpose of winning any mineral or mineral bearing substance, and all ways, works, machinery, plant, buildings and premises below or above the ground belonging to or used in connection with such activity, and any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any of such substances and includes mines that have been temporarily suspended, rendered inactive, closed out or abandoned as well as lands where tailings, or wasterock, or both, or any other prescribed substances from any opening or excavation or working of the ground have been deposited;
15. "mine", when used as a verb, means the performance of any work in or about a mine, as defined in paragraph 14;
16. "minerals" means all naturally occurring metallic and non-metallic minerals, including natural gas, petroleum, coal, salt, quarry and pit material, gold,

silver and all rare and precious metals, but does not include sand, gravel and peat;

- 16a. "mining claim" means a parcel of land, including land under water, that has been staked and recorded in accordance with this Act and the regulations.

**(8) Paragraphs 18, 19, 20, 21 and 22 of the said section 1 are repealed and the following substituted therefor:**

18. "mining rights" means the right to minerals on, in or under any land;
19. "Minister" means the Minister of Mines, except that in Parts IV and IX-A "Minister" means the Minister of Natural Resources;
20. "Ministry" means the Ministry of the Minister;
21. "owner", when used in Parts IX, IX-B and XI, includes every person, being the immediate proprietor, lessee or occupier of a mine, or a part thereof, or of any land located, patented or leased as mining land, and includes an agent, or a person designated by the owner or agent as responsible for the control, management and direction of a mine, or a part thereof, but does not include a person receiving merely a royalty from a mine, or mining lands, or the owner of the surface rights only;
22. "patent" means a grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents, but in sections 4, 28, 97, 100 to 108, 190, 194, 197 and 204, the meaning is limited to freehold patents.

**(9) Paragraph 23 of the said section 1 is repealed and the following substituted therefor:**

23. "prescribed" means prescribed by the regulations;
- 23a. "prospecting" means the investigating of, or searching for, minerals.

**(10) Paragraphs 26 and 29 of the said section 1 are repealed.**

**2. The said Act is amended by adding thereto the following section:**

Purpose of  
Act

**1a.** The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources and to minimize adverse effects on the environment through rehabilitation of mining lands in Ontario.

**3. Section 3 of the said Act is repealed.**

**4. Section 4 of the said Act is amended by adding thereto the following subsections:**

Immunity for  
acts done in  
good faith

(3) No action or other proceeding for damages shall be instituted against the Minister, the Deputy Minister or any officer or employee of the Ministry or any one acting under the authority of the Minister or Deputy Minister for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Crown  
liability  
R.S.O. 1980,  
c. 393

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted.

Delegation of  
Minister's  
powers, etc.

(5) Where under this Act a power or duty is granted to or vested in the Minister, the Minister may in writing delegate that power or duty to the Deputy Minister or to any officer or employee of the Ministry, subject to such limitations, conditions and requirements as the Minister sets out in the delegation.

Employees  
authorized to  
take  
affidavits

(6) The Minister may empower such employees of the Ministry as the Minister designates to administer oaths and take and receive affidavits, declarations and affirmations authorized by law, for the purposes of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of such oath, affidavit, declaration or affidavit, all the powers of a commissioner for taking affidavits under the *Commissioners for taking Affidavits Act*.

R.S.O. 1980,  
c. 75

**5.—(1) Subsection 6 (1) of the said Act is repealed and the following substituted therefor:**

Mining  
recorder

(1) The Minister may appoint an employee of the Ministry as mining recorder for each mining division.

**(2) Subsection 6 (3) of the said Act is repealed.**



**6. Section 7 of the said Act is amended by inserting after “such” in the first line “record”.**

**7.—(1) Section 9 of the said Act is amended by striking out “any of such books” in the first and second lines and inserting in lieu thereof “a record book”.**

**(2) The said section 9 is further amended by adding thereto the following subsections:**

(2) Where a copy of or extract from an entry in a record book or any document filed in the recorder's office is recorded electronically or on a magnetic medium, any writing that,

Computer  
printout,  
etc.,  
admissible  
evidence

- (a) represents the entry in the record book or the filed document;
- (b) is generated or produced from the electronic record or magnetic medium; and
- (c) is in a readily understandable form,

is admissible in evidence to the same extent as the original book or filed document.

(3) Where a record in a recorder's office is recorded electronically or on a magnetic medium and there is no original written record that corresponds to the record, any writing that,

Idem

- (a) represents the record;
- (b) is generated by or produced from the electronic record or magnetic medium; and
- (c) is in a readily understandable form,

is admissible in evidence to the same extent as the record would be if it were an original written record.

**8.—(1) Subsection 12 (1) of the said Act is amended by striking out “and any such purchase or interest is void” in the fourth and fifth lines.**

**(2) Subsection 12 (2) of the said Act is repealed and the following substituted therefor:**

(2) Where the Deputy Minister is satisfied that an officer has in good faith acquired an interest referred to in subsection

Waiver by  
Deputy  
Minister

(1) for other than mining purposes, the Deputy Minister may in writing waive the application of subsection (1) to the officer.

Penalty (3) Any officer contravening subsection (1) forfeits his or her office.

**9. Subsection 18 (1) of the said Act is repealed and the following substituted therefor:**

Licence required (1) No person shall prospect on Crown lands or stake out, record or apply to record the staking of a mining claim unless the person is the holder of a prospector's licence issued under this Act.

**10. Section 19 of the said Act is repealed and the following substituted therefor:**

Who may receive licence **19.**—(1) Any natural person who is of the age of eighteen years or over is entitled to obtain a prospector's licence upon application therefor made in the prescribed form and upon payment of the prescribed fee.

Date and term of licence (2) A licence shall be dated on the day of its issue and expires at midnight on the day of the fifth anniversary of the licensee's birth date that follows the issue of the licence.

Not valid unless signed (3) A licence is not valid unless it is signed by the holder thereof in the space provided on the licence.

Licence not transferrable (4) A licence is not transferrable.

Who may issue (5) A licence may be issued by any recorder.

Service (6) Any notice or document relating to a licensee is sufficiently served upon the licensee if delivered or sent by prepaid first class mail to the address shown on the application for the prospector's licence or to the address given under subsection (8), if applicable.

Idem (7) Where service is made by prepaid first class mail under subsection (6) it shall be deemed to have been made on the fifth day after the day of mailing.

Notice of change of address (8) A licensee shall notify, in the prescribed form, the recorder of any change in the address of the licensee.

**11. Section 21 of the said Act is repealed.**

**12.—(1) Subsection 22 (1) of the said Act is repealed and the following substituted therefor:**

(1) A licensee is entitled to a renewal of his or her licence upon making application therefor in the prescribed form and paying the prescribed fee within sixty days of its expiration. Renewal of licence

(1a) Notice of the expiration of a licence shall be given by the recorder to the holder of the licence not later than sixty days before the expiry date. Notice of expiration of licence

**(2) Subsections 22 (2) and (3) of the said Act are repealed and the following substituted therefor:**

(2) A licence may be renewed by any recorder. Who may renew

(3) The renewal shall bear date on the day following the expiration of the licence or renewal of licence of which it is the renewal and shall take effect immediately upon the expiration of that licence, or renewal thereof, as the case may be. Date and term of renewal

**(3) Subsection 22 (4) of the said Act is amended by adding at the end thereof “and shall expire at 12 o'clock midnight on the day that is the fifth anniversary of the licensee's birth date following the effective date of the renewal”.**

**(4) Subsection 22 (5) of the said Act is repealed and the following substituted therefor:**

(5) The Minister shall renew without fee the licence of a person who has held a licence continuously for twenty-five years, and the licence shall remain in good standing during the lifetime of the licensee. Lifetime renewal by Minister

(6) The Minister may, at his or her discretion, renew the licence of a person without fee and order that the licence remain in good standing during the lifetime of the licensee. Idem

**13. Subsection 24 (1) of the said Act is repealed and the following substituted therefor:**

(1) No person shall apply for or hold more than one prospector's licence. Not more than one licence

**14.—(1) Subsection 27 (5) of the said Act is repealed and the following substituted therefor:**

(5) While a licence is suspended under subsection (3), the licensee may renew the licence but the licensee may not stake out or apply to record a mining claim. Rights of licensee under suspension



Where holder  
of mining  
claim  
contravenes  
Act

(5a) Where the recorder finds, after a hearing, that a holder of a mining claim has contravened any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the recorder, order that such holder may not acquire an unpatented mining claim or interest therein through transfer or obtain an extension of time in which to perform work or to apply for lease on any unpatented mining claim recorded in the name of the holder.

Cancellation  
of mining  
claim

(5b) Where the Commissioner finds, after a hearing, that a holder of a mining claim has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, declare any mining claims of the holder to be cancelled and thereupon all rights of the holder in or to mining claim lands cease.

Order  
pending  
hearing

(5c) Pending the holding of a hearing on any matter under this section, the Commissioner or the recorder, as the case may be, before whom the hearing will be held, may order that any mining claim of the licensee or holder whose conduct is in question shall not, before the conclusion of the hearing and final disposition of the matter, be transferred to any other person.

Prohibition  
against  
staking out  
claims, etc.

(5d) Where mining claims are cancelled under subsection (5b), the former holder of the mining claims may not stake out or apply for a mining claim or acquire an unpatented mining claim or interest therein through transfer for such period of time as the Minister determines, and the Minister shall notify the former holder of the period of time so determined.

**(2) Subsection 27 (6) of the said Act is repealed and the following substituted therefor:**

Appeal

(6) A finding by the Commissioner that a licensee or holder of a mining claim has wilfully contravened this Act or the regulations or by a recorder that a licensee or holder of a mining claim has contravened this Act or the regulations, as the case may be, may be appealed in like manner as any decision of the Commissioner or recorder, respectively, and the Minister shall give effect to the decision on the appeal.

**15. Section 29 of the said Act is amended by striking out "licensee" in the fourth line and inserting in lieu thereof "person".**

**16.—(1) Clause 30 (b) of the said Act is repealed and the following substituted therefor:**

- (b) upon any land laid out on a registered plan of subdivision.

(2) Clause 30 (d) of the said Act is repealed.

**17.—**(1) Clause 31 (b) of the said Act is repealed and the following substituted therefor:

- (b) for which an application brought in good faith is pending in the Ministry of Natural Resources under the *Public Lands Act* or otherwise, and the applicant may acquire the minerals; or

R.S.O. 1980,  
c. 413

(2) Clause 31 (c) of the said Act is amended by inserting after “Ministry” in the third line “of Natural Resources”.

(3) Clause 31 (d) of the said Act is amended by striking out “and Communications” in the second line.

**18.** Subsection 33 (1) of the said Act is amended by striking out “or company” in the second and third lines.

**19.** Section 34 of the said Act is amended by striking out “licensee” in the fifth line and inserting in lieu thereof “holder of the mining claim”.

**20.** Section 35 of the said Act is amended by striking out “and Communications” in the third line.

**21.—**(1) Subsection 36 (1) of the said Act is amended by striking out “or an officer appointed under this Act and designated by the Minister” in the first and second lines.

(2) Subsection 36 (2) of the said Act is repealed and the following substituted therefor:

- (2) Where the Minister makes an order under subsection (1), the Minister shall, within twenty-four hours of the date of the order, mail a copy of the order to the recorder.

Copy of  
order sent to  
recorder

(3) Subsection 36 (4) of the said Act is repealed and the following substituted therefor:

- (4) Lands, mining rights or surface rights withdrawn under this section, until re-opened by the Minister, shall remain withdrawn and shall not be prospected or staked out.

Lands  
withdrawn  
not to be  
prospectd,  
etc.

**22.** Section 38 of the said Act is repealed.

**23. Section 39 of the said Act is repealed and the following substituted therefor:**

Permit under  
R.S.O. 1980,  
cc. 173, 413

**39.** Before beginning or carrying on any prescribed assessment work on a mining claim, the holder thereof, in addition to any other requirement, shall obtain a written permit entitling the holder to do so as provided in the *Forest Fires Prevention Act* or the *Public Lands Act*.

**24. Section 40 of the said Act is repealed and the following substituted therefor:**

Manner of  
staking  
mining claim

**40.** A mining claim shall be staked in such size, form and manner as is prescribed and may be staked on any day.

**25. Section 42 of the said Act is repealed.**

**26.—(1)** Subsections 43 (1), (2) and (3) of the said Act are repealed.

(2) Subsection 43 (5) of the said Act is amended by striking out “and Communications” in the third line.

**27.—(1)** Subsection 44 (1) of the said Act is repealed and the following substituted therefor:

Rates for  
licences of  
occupation

(1) Notwithstanding the provisions of a licence of occupation, there shall be paid, in advance, the prescribed annual rental for the licence of occupation.

(2) Subsection 44 (6) of the said Act is repealed and the following substituted therefor:

Lease may  
be issued  
under s. 94

(6) The holder of a licence of occupation, upon application in writing therefor and upon the surrender of the licence of occupation, may be issued a lease under section 94 and the rental for each year of the term thereof shall be that prescribed for the purposes of section 94 for years subsequent to the first year of a term.

**28. Sections 45, 46, 47 and 48 of the said Act are repealed.**

**29. Section 50 of the said Act is amended by adding thereto the following subsection:**

Deemed  
substantial  
compliance

(2) The staking out of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific staking requirements if,



- (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and
- (b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations.

**30. Section 51 of the said Act is repealed and the following substituted therefor:**

**51.—**(1) A licensee who has staked out a mining claim shall make an application in the prescribed form to the recorder accompanied by the prescribed fee and a sketch or plan showing the prescribed information to record the claim not later than thirty-one days after the day on which staking was completed.

Application  
to record  
mining claim

(2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands.

Priority of  
completion  
prevails

(3) Where one of the applications made by two or more licensees to record the staking of a mining claim is entitled to priority under subsection (2), the recorder shall cancel the other application or applications and shall by registered letter mailed not later than the following day notify the other licensee or licensees of the recorder's action and the reason therefor.

Notice to  
other licensee  
or licensees

**31. Section 52 of the said Act is repealed.**

**32.—**(1) Subsection 54 (1) of the said Act is amended by striking out "unless a prior application is already recorded and subsisting for the same, or for any substantial part of the same lands or mining rights" in the fourth, fifth and sixth lines.

(2) Subsection 54 (2) of the said Act is amended by inserting after "claim" in the fourth line "that has priority under subsection 51 (2)" and by striking out "licensee" in the twelfth line and inserting in lieu thereof "person".

(3) Subsections 54 (5), (6), (7) and (8) of the said Act are repealed.

(4) Subsection 54 (9) of the said Act is repealed and the following substituted therefor:

(9) There shall be added to each claim number the prefix allotted to the mining division in which the claim is situate.

Division  
prefix added

**33. Section 55 of the said Act is repealed and the following substituted therefor:**

Metal tags

**55.—**(1) Metal tags and duplicate tags shall be provided by the Ministry on payment of the prescribed fee and may be used by any licensee in staking out claims in the prescribed manner and within the prescribed time.

Transfer of tags

(2) Metal tags and duplicate tags do not expire but may not be re-used.

**34.—**(1) Subsection 56 (1) of the said Act is amended by inserting after “by” in the first line “a detailed statement of claim and an” and by striking out “licensee” in the third line and in the fifth line and inserting in lieu thereof in each instance “person”.

(2) Subsection 56 (2) of the said Act is repealed and the following substituted therefor:

Copy to be sent to recorded holder

(2) A copy of the dispute, statement of claim and affidavit shall be left by the disputant with the recorder who shall, not later than the next day after the filing of the dispute, transmit the copy by registered mail to the recorded holder or holders of the mining claim affected thereby, and, if the copy is not left, the recorder may refuse to file or note the dispute or may collect from the disputant the prescribed fee per page for making the copy.

(3) Subsection 56 (5) of the said Act is repealed and the following substituted therefor:

When not to be received

(5) A dispute shall not be received or entered against a claim,

- (a) after one year from the recording of the claim;
- (b) after the first prescribed unit of assessment work has been performed and filed and, where necessary, approved; or
- (c) except by leave of the Commissioner,
  - (i) after the validity of the claim has been adjudicated upon by the recorder or by the Commissioner, or
  - (ii) after it has been on record for sixty days and has already had a dispute entered against it.

(5a) Where a dispute is entered against a claim after the first prescribed unit of assessment work has been performed and filed but before the assessment work has been approved, where approval is necessary, the dispute shall be deemed to have been resolved in favour of the holder or holders of the claim if the assessment work is subsequently approved and the note of the dispute entered on the record of the claim shall be struck out by the recorder who shall by registered letter mailed not later than the following day notify the disputant of the recorder's action and the reason therefor.

Where  
assessment  
work  
subsequently  
approved

**(4) Section 56 of the said Act is amended by adding thereto the following subsections:**

(7) Notwithstanding clause 28 (c) and subsection 84 (1), where a dispute has not been filed against a mining claim a transferee who has acquired the claim in good faith may re-stake or cause to be re-staked the claim or any part thereof at any time and, upon filing with the recorder a notice in the prescribed form of the re-staking, the recorder shall, upon notice to all persons having a recorded interest in the original claim, order that the re-staked claim shall be deemed to have been recorded on the date of the recording of the original claim or any part thereof that has been re-staked.

Re-staking  
claim

(8) In an order made under subsection (7), the recorder shall provide that orders, assessment work reports, instruments or other notations which have been entered against the original claim be entered in the record book in respect of the re-staked claim, and may include in the order such provisions as the recorder considers necessary to effect such entry in the record book of the re-staked claim.

Entry of  
orders, etc.,  
against re-  
staked claim

**35. Sections 57, 58 and 59 of the said Act are repealed.**

**36.—(1) Subsection 59a (1) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 48, section 1, is repealed and the following substituted therefor:**

(1) A recorder may by order relieve an unpatented mining claim that is subject to forfeiture as a result of an administrative error on the part of the Crown from the forfeiture.

Relief from  
forfeiture

**(2) Subsection 59a (4) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 48, section 1, is repealed and the following substituted therefor:**

(4) An order under subsection (1) or (3) may grant an extension of time for performing and reporting any work required to be performed or for applying and paying for a

Extension of  
time



lease in respect of the claim or provide for the payment of any fees in respect of the claim.

**37. Subsections 60 (1), (2), (3) and (4) of the said Act are repealed and the following substituted therefor:**

Rights in  
claim

(1) The staking out or the filing of an application for or the recording of a mining claim, or the acquisition of any right or interest in a mining claim by any person or all or any of such acts, does not confer upon that person,

- (a) any right, title, interest or claim in or to the mining claim other than the right to proceed as in this Act provided to perform the prescribed assessment work or to obtain a lease from the Crown and, prior to the performance, filing and approval of the first prescribed unit of assessment work, the person is merely a licensee of the Crown and after that period and until he or she obtains a lease the person is a tenant at will of the Crown in respect of the mining claim; or
- (b) any right to take, remove or otherwise dispose of any minerals found in, upon or under the mining claim.

**38. Section 62 of the said Act is repealed and the following substituted therefor:**

Permission to  
test mineral  
content

**62.**—(1) The Minister may give written permission, subject to such conditions as are prescribed, to mine, mill and refine mineral bearing substance from an unpatented mining claim for the purpose of testing mineral content.

Conditions

(2) Permission granted under subsection (1) shall be for a specified time and shall cover a specified quantity of mineral bearing substance.

Sale of end  
product

(3) The end product of mining, milling and refining permitted under subsection (1), except as provided in subsection (4), shall not be sold or otherwise disposed of until the mining claim from which the minerals were taken is leased under this Act.

Disposition  
of proceeds

(4) Subsection (3) does not apply where the Minister gives written permission for the sale or disposition and where the Minister does so, the sale or disposition shall be in accordance with such terms as the Minister may impose.

**39. Section 63 of the said Act is repealed.**

**40.** Subsection 64 (2) of the said Act is amended by adding at the commencement thereof "Unless ordered otherwise by the Minister".

**41.** Section 70 of the said Act is amended by striking out "may" in the second line and inserting in lieu thereof "shall".

**42.—**(1) Section 71 of the said Act is amended by striking out "nor shall any such instrument be recorded without an affidavit in the prescribed form, attached to or endorsed thereon, made by a subscribing witness to the instrument" in the eighth, ninth, tenth and eleventh lines.

(2) The said section 71 is further amended by adding thereto the following subsections:

(2) Any such instrument shall not be recorded unless an affidavit in the prescribed form, attached thereto or endorsed thereon, is made by a subscribing witness to the instrument. Affidavit of execution

(3) Subsection (2) does not apply to the execution of an instrument by a corporation under its seal. Corporations

**43.** Subsection 74 (3) of the said Act is repealed.

**44.—**(1) Subsection 75 (3) of the said Act is repealed and the following substituted therefor:

(3) The certificate is of no effect and does not constitute notice to any person of the proceeding until it is filed. Not to constitute notice until filed

(2) Subsection 75 (6) of the said Act is amended by striking out "upon the latter becoming, if he is not before, a licensee" in the fifteenth and sixteenth lines.

(3) Subsection 75 (7) of the said Act is amended by striking out "a fee of \$1, which" in the second and third lines and inserting in lieu thereof "any required fee and such".

**45.** The heading preceding section 76 of the said Act is struck out and the following substituted therefor:

#### ASSESSMENT WORK

**46.** Section 76 of the said Act is repealed and the following substituted therefor:

**76.—**(1) The holder of a mining claim shall, following the recording of the claim, perform such annual units of assessment work as are prescribed. Assessment work

## Report

(2) Subject to subsection (3), every mining claim holder shall, not later than the anniversary date, file in the office of the recorder or such other location as is prescribed a report in the prescribed form of the assessment work done for the purpose of complying with subsection (1), together with such other information as may be prescribed.

## Item

(3) The report mentioned in subsection (2) shall, in respect of any specified type of assessment work, be filed not later than such date earlier than the anniversary date as may be prescribed for that type of assessment work.

## Credits measured in dollars spent

(4) For the purpose of subsection (1), assessment work credits shall be measured in terms of dollars spent.

**47. Sections 77 and 78 of the said Act are repealed and the following substituted therefor:**

## Types of work eligible for credits, etc.

**77.—**(1) The types of work that are eligible for assessment work credits, the method of calculating and approving the credits for work performed and the distribution of credits for work performed to mining claims shall be determined in such manner as is prescribed.

## Prospecting and regional surveys

(2) Prospecting and regional surveys performed on Crown lands before the staking of a mining claim are eligible for assessment work credits in such manner as is prescribed.

## Work on patented mining claims

(3) Exploration work performed on patented mining claims may be allocated as assessment work to contiguous unpatented mining claims in the prescribed manner.

**48. Section 79 of the said Act is repealed and the following substituted therefor:**

## Computing time for performance of assessment work

**79.—**(1) In computing the time within which work upon a mining claim is required to be performed or within which application and payment for a lease may be made,

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cc. 173, 413

- (a) if a permit under the *Forest Fires Prevention Act* or the *Public Lands Act* that is necessary for the beginning or carrying on of work under this Act is refused or the performance of such work is prohibited under those Acts or any other Act, or the holder defers the start of work or is delayed in its performance at the request, or by the actions, of the Crown, the time during which such refusal, prohibition, deferment or delay subsists, if the holder provides the Commissioner with satisfactory evidence of such refusal, prohibition, deferment or delay; or



- (b) the time during which proceedings in respect of the mining claim are pending before the Supreme Court, the Commissioner or the recorder, where the Commissioner is satisfied that any delay in settling the matter is not the fault of the holder,

shall be excluded, and the Commissioner may make an order fixing the date or dates by which the next or any prescribed units of work shall be performed and reported or by which an application and payment for lease may be made.

(2) Where the time for doing something under this Act is excluded, the next anniversary date after the exclusion in respect of the mining claim involved shall be deemed to be the date that falls after the anniversary date that would have occurred, except for this provision, by the number of days that equals the number of days of the exclusion, and all subsequent anniversary dates shall be adjusted accordingly.

Anniversary  
date changed

(3) Notwithstanding anything in this Act, where in the opinion of the Minister special circumstances exist, the Minister may exclude the time within which work upon a mining claim is required to be performed or within which application and payment for lease may be made, and may by order fix the anniversary date or dates by which the next or any subsequent periods of work shall be performed and reported or by which application and payment for lease may be made.

Special  
circumstances

#### **49. Section 80 of the said Act is repealed.**

#### **50. Section 83 of the said Act is repealed and the following substituted therefor:**

**83.—**(1) The holder of a mining claim may abandon the claim at any time by filing a notice of abandonment in the prescribed form with the recorder.

Right of  
mining claim  
holder to  
abandon  
claim

(2) The holder of a mining claim may abandon any part of the claim at any time on such conditions as are prescribed, by filing a notice of partial abandonment in the prescribed form with the recorder.

Abandonment  
of part of  
claim

(3) The recorder shall enter a note of the abandonment upon the record of the claim with the date of the receipt of the notice and shall forthwith post up in the recorder's office a notice of the abandonment with a sketch of the claim or part thereof to be abandoned.

Notice of  
abandonment

(4) Where part of a claim has been abandoned under subsection (2), the recorder shall issue an order directing the

Order by  
recorder

moving of posts or tags, the erection of new posts and the identification of new boundary lines and stating the time within which the work is to be completed.

Compliance  
with order

(5) Where an order is issued under subsection (4), the mining claim holder affected shall file an affidavit in the prescribed form within the time set out in the order and a copy of the affidavit, marked with the date of the posting shall be posted by the recorder in the recorder's office.

Extension of  
time by  
recorder or  
order of  
abandonment

(6) Where the work set out in an order under subsection (4) has not been completed within the time set out in the order, the recorder may extend the time for completing the work or may order that the portion of the claim on which the work was to be done is abandoned and shall, in the case where an order of abandonment is made, by registered letter mailed not later than the next day after the making of the order, notify the holder of the recorder's action and the reason therefor, and a copy of the order shall be posted by the recorder in the recorder's office.

When claim  
open for  
staking

(7) Where part of a mining claim is abandoned under subsection (2) and an order of the recorder is made under subsection (6), the mining claim abandoned is open for staking from 9 o'clock in the forenoon of the eleventh day after the posting of the order of the recorder made under subsection (6).

Idem,  
abandonment  
of whole  
claim

(8) Every mining claim abandoned under subsection (1) is open for staking from 9 o'clock in the forenoon of the eleventh day after the notice of abandonment is filed.

Idem,  
abandonment  
of part of  
claim

(9) Where part of a mining claim is abandoned under subsection (2) and no order is made by the recorder under subsection (6), that part of the claim is open for staking from 9 o'clock in the forenoon of the eleventh day after the posting of the affidavit required under subsection (5).

**51. Section 84 of the said Act is repealed and the following substituted therefor:**

Deemed  
abandonment  
of claim

**84.—**(1) Non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time or manner of the staking out and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commissioner, be forthwith opened to prospecting and staking out.

(2) Notwithstanding subsection (1), where in respect of a mining claim, no dispute is on file and, Saving

- (a) one year has elapsed since the day of the recording of the claim; or
- (b) the first prescribed unit of assessment work has been performed and filed and, where necessary, approved,

the mining claim shall be conclusively deemed to have been staked out and recorded in compliance with the requirements of this Act and the regulations.

**52.—(1) Subsection 85 (1) of the said Act is amended by striking out “patent” in the second line and inserting in lieu thereof “lease”.**

**(2) Clause 85 (1) (a) of the said Act is repealed.**

**(3) Clause 85 (1) (c) of the said Act is repealed and the following substituted therefor:**

- (c) if the prescribed work is not duly performed and reported as required by section 76 unless an application and payment for a lease of the mining claim is made under section 94.

**(4) Clauses 85 (1) (d) and (e) of the said Act are repealed.**

**(5) Subsection 85 (2) of the said Act is amended by striking out “licensee” in the second line and inserting in lieu thereof “person”.**

**53. Sections 86 and 87 of the said Act are repealed and the following substituted therefor:**

**86.—(1) On application therefor being made to the recorder within thirty days before the expiration of the time for filing a report of assessment work, the recorder may allow an extension of time for performing and filing the report of the assessment work on such conditions as are prescribed.**

Extension of  
time by  
recorder

(2) Where forfeiture or loss of rights has occurred, the lands, mining rights or mining claims concerned are not open for staking until 7 o'clock in the forenoon of the day immediately following that upon which forfeiture or loss of rights occurred.

Re-staking



When order  
takes effect

(3) An order made by the recorder under this section comes into effect and shall be deemed to have been recorded at the time that the application was received in the office of the recorder, notwithstanding that such order may not have been immediately entered in the record book.

Cancellation  
of record

(4) The recorder, upon a forfeiture or abandonment of or loss of rights in a mining claim, shall forthwith enter a note thereof, with the date of entry, upon the record of the claim and mark the record "Cancelled", and shall post up forthwith in the recorder's office a notice of cancellation.

**54. Section 88 of the said Act is repealed and the following substituted therefor:**

Death of  
licensee or  
holder

**88.** Where a licensee in whose name a mining claim has been staked out dies before the claim is recorded or where the holder of a claim dies before issue of the lease for the claim, no other person is, without leave of the Commissioner, entitled to stake out or record a mining claim upon any part of the same lands or to acquire any right, privilege or interest in respect thereof within twelve months after the death of such licensee or holder, and the Commissioner may at any time make such order as the Commissioner considers just for vesting the claim in the representative of such holder and extending the time for performing the work or applying for lease, notwithstanding any lapse, abandonment, cancellation, forfeiture or loss of rights under any provision of this Act.

**55. Subsection 89 (1) of the said Act is repealed and the following substituted therefor:**

Inspection by  
Commissioner,  
recorder or  
inspector

(1) The Commissioner or the recorder may inspect or order an inspection of, and an inspector or other officer appointed by the Minister may inspect, a mining claim at any time with or without notice to the holder for the purpose of ascertaining whether this Act has been complied with, but after one year from the recording of the claim, or after the first prescribed unit of assessment work has been performed, filed and approved, no such inspection shall, unless ordered by the Minister under subsection 90 (5), be made for the purpose of ascertaining whether the claim has been staked out in the prescribed manner.

**56.—(1) Subsection 90 (4) of the said Act is amended by striking out "licensee" in the seventh line and inserting in lieu thereof "holder".**

**(2) Section 90 of the said Act is amended by adding thereto the following subsection:**

(5) Notwithstanding subsections 56 (5) and 84 (2), the Minister may challenge the validity of a mining claim at any time during the life of the claim and may direct the recorder to inspect the claim in accordance with section 89.

Inspection  
ordered by  
Minister

**57. The said Act is further amended by adding thereto the following section:**

**91a.**—(1) If there is an owner of the surface rights of the land comprising a mining claim, where a holder of the mining claim first proposes to do ground assessment work on such land, the holder shall give notice in the prescribed form to the owner of the surface rights of the holder's intention to perform the work.

Notice of  
intention to  
perform  
assessment  
work

(2) A person who has given notice under this section may enter on the land and perform the work at any time immediately following the day the notice is given.

Entry on  
land to  
perform work

(3) A recorder shall not record ground assessment work unless,

Where work  
not to be  
recorded

(a) the holder files with the recorder a certificate in the prescribed form establishing that the required notice was given; or

(b) the recorder determines that it is not feasible in the circumstances to give notice to the owner of the surface rights.

**58. Section 92 of the said Act is repealed and the following substituted therefor:**

**92.**—(1) In this section and in section 91a, "owner of the surface rights" means a person to whom the surface rights of land have been granted, sold, leased or located.

Definition

(2) Where there is an owner of surface rights of land or where land is occupied by a person who has made improvements thereon that, in the opinion of the Minister, entitles that person to compensation, a person who,

Right of  
owner of  
surface rights  
to compen-  
sation

(a) prospects, stakes out or causes to be staked out a mining claim or an area of land for a boring permit;

(b) formerly held a mining claim or an area of land for a boring permit that has been cancelled, abandoned or forfeited;

- (c) is the holder of a mining claim or an area of land for a boring permit and who performs assessment work; or
- (d) is the lessee or owner of mining lands and who carries on mining operations,

on such land, shall compensate the owner of the surface rights or the occupant of the lands, as the case may be, for damages sustained to the surface rights by such prospecting, staking out, assessment work or operations.

Right of holder of mining claim, etc., to compensation

(3) Every person who damages mineral exploration workings or claim posts, line posts, tags or surveyed boundary markers delineating mining lands shall compensate the holder of the mining claim or the owner or lessee of the mining lands, as the case may be, for damages sustained.

Determination of compensation by Commissioner

(4) In default of agreement and upon application made in the prescribed form by either party, the amount and the time and manner of payment of compensation under subsection (2) or (3) shall be determined by the Commissioner after a hearing and, subject to appeal to the Divisional Court where the amount claimed exceeds \$1,000, the Commissioner's order is final.

Prohibiting work pending settlement

(5) The Commissioner may order the giving of security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is paid or secured, further prospecting, staking out or working by any person.

Lien for compensation

(6) The compensation is a special lien upon any mining claim or mining lands, as the case may be, and no further prospecting, staking out or performing of work, except by leave of the Commissioner, shall be done by any person after the time fixed for the payment or securing of the compensation, unless the compensation has been paid or secured as directed.

Power of Commissioner to vary, etc., order

(7) The Commissioner, on notice to all interested parties and for good cause shown, on such terms as seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order made under this section.

Priorities

(8) In a hearing under subsection (4), the Commissioner shall take into account which of the rights was applied for first and, except where injustice would result, shall give the holder



of those rights due priority in the consideration of the dispute between the parties.

(9) Where unpatented mining claims are affected by an agreement entered into in respect of the compensation referred to in subsection (2), or by an order made under subsection (4), the agreement or a certified copy of the order, as the case may be, may be filed by the person to whom the compensation is payable in the office of the recorder upon payment of the prescribed fee.

Filing of agreement or order in office of recorder

(10) Where an unpatented mining claim is subsequently leased, the Minister shall cause any agreement or order filed in the recorder's office under subsection (9) that affects the leased lands to be registered against the lands in the proper land registry office and the person to whom the compensation is payable is entitled to enforce the terms of the agreement or order against the lessee and, subject to the *Registry Act* and the *Land Titles Act*, against any subsequent lessee of the land.

Registration of order or agreement

R.S.O. 1980, cc. 445, 230

**59.—(1) Subsections 94 (1), (2), (3), (4) and (5) of the said Act are repealed and the following substituted therefor:**

(1) Upon compliance with this Act and the regulations and upon payment of the rent for the first year, the holder of a mining claim is entitled to a lease of the claim.

Right to lease of claim

(2) The application and payment for a lease may be made to the recorder at any time after the first prescribed unit of assessment work on a mining claim is performed, filed and, if necessary, approved, and the application shall be accompanied by,

Application for lease

- (a) a certificate of performance of the prescribed units of assessment work that are required to be performed as of the time of application;
- (b) a plan of survey where required under section 108 or 109;
- (c) an agreement or an order of the Commissioner indicating that surface rights compensation, if any, has been paid, secured or settled; and
- (d) the prescribed fee.

(3) A lease under this section shall be for a term of twenty-one years at the prescribed rental, payable in advance, for the first year and at the prescribed rate for each subsequent year.

Term of lease

Lease of  
mining rights

(4) The holder of a mining claim may elect to apply for a lease of the mining rights only.

Rental

(5) Where a lease under this section is for mining rights only, the rental shall be at the prescribed rate for such a lease.

**(2) Subsection 94 (6) of the said Act is repealed.**

**(3) Subsections 94 (8) and (9) of the said Act are repealed and the following substituted therefor:**

Renewal  
lease rental

(8) The annual rental for a renewal lease is the prescribed amount, payable in advance.

Refusal to  
renew lease

(9) The Minister shall refuse to renew a lease unless,

(a) the production of minerals has occurred continuously for more than one year since the issuance or last renewal of the lease; or

(b) the lessee has demonstrated to the satisfaction of the Minister a reasonable effort to bring the property into production.

**(4) Subsection 94 (12) of the said Act is amended by striking out "prescribed by" in the second line and inserting in lieu thereof "set out in".**

**(5) Subsections 94 (16), (17), (18), (19) and (20) of the said Act are repealed and the following substituted therefor:**

Disposition  
of surface  
rights  
1989, c. 23  
R.S.O. 1980,  
c. 413

(16) Any surface rights reserved in a lease or renewal thereof may be dealt with under the *Aggregate Resources Act*, 1989 or under the *Public Lands Act* or the regulations made under those Acts.

Additional  
work where  
area of claim  
exceeds  
prescribed  
size

(17) Where the area of the mining claim exceeds by more than 15 per cent the prescribed size for a mining claim and the claim is not reduced in size under section 110, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area.

Contiguous  
claims

(18) Where there is a group of contiguous claims held in the name of one claim holder and their average area does not exceed by more than 15 per cent the size prescribed for a mining claim, the Minister may direct that subsection (17) does not apply.

(19) Where additional work is required under subsection (17), the Minister may direct the time within which such work is to be performed and reported.

Where additional work required

**60.—(1) Subsections 95 (1) and (2) of the said Act are repealed and the following substituted therefor:**

(1) In this section, “lease” means a lease of surface and mining rights or of mining rights issued under,

Definition

(a) section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof; or

(b) subsection 190 (3) of this Act, or a predecessor thereof,

and includes a renewal of such a lease.

(2) Subject to subsection (3), notwithstanding the provisions of a lease, the annual rental for a lease is the prescribed amount.

Amount of rent

**(2) Subsection 95 (4) of the said Act is repealed and the following substituted therefor:**

(4) A lease referred to in clause (1) (a) is renewable in perpetuity for periods of ten years and every renewal shall date from the day following the expiry of the lease if application therefor is made within ninety days of the expiration of the lease or within such further period as the Minister, in the circumstances of the case, considers proper.

Renewal of lease

**(3) Subsection 95 (6) of the said Act is amended by striking out “has not been renewed under subsection (4) or” in the first and second lines.**

**(4) Subsection 95 (9) of the said Act is repealed and the following substituted therefor:**

(9) The holder of a lease, upon application in writing therefor and upon the surrender of the lease and upon meeting the conditions set out in subsection 94 (9), may be issued a lease under section 94 for a term of twenty-one years and the rental for each year of the term thereof shall be that prescribed for the purposes of section 94 for years subsequent to the first year of a term.

Lease may be issued under s. 94

**61. Section 96 of the said Act is repealed and the following substituted therefor:**



Exchange of  
lease

**96.**—(1) The holder of a lease issued under this Act, upon application in the prescribed form to the Minister, accompanied by the prescribed fee and upon the surrender of the lease, may be issued in exchange for that lease, on such terms and conditions as the Minister considers appropriate, two or more replacement leases.

Terms of  
replacement  
leases

(2) Replacement leases issued under subsection (1) shall cover together the same lands as were covered by the surrendered lease, shall be for a term equal to the balance of the term of the surrendered lease and shall be at the same rental rate per hectare as that lease.

**62.** Subsection 97 (4) of the said Act is repealed and the following substituted therefor:

Amount of  
rent

(4) The annual rental of a lease or renewal under this section is the prescribed amount, payable in advance.

**63.** Subsection 102 (2) of the said Act is repealed and the following substituted therefor:

Disposition  
of surface  
rights  
1989, c. 23  
R.S.O. 1980,  
c. 413

(2) Any surface rights reserved under this section may be dealt with under the *Aggregate Resources Act, 1989* or under the *Public Lands Act* or the regulations made under those Acts.

**64.**—(1) Subsection 108 (1) of the said Act is amended by striking out “patent” in the first line.

(2) Subsection 108 (2) of the said Act is repealed and the following substituted therefor:

Prescribed  
methods of  
surveying  
R.S.O. 1980,  
c. 493

(2) Subject to the *Surveys Act*, the prescribed methods and procedures shall be followed in the surveying of mining claims.

(3) Subsection 108 (5) of the said Act is repealed.

(4) Subsections 108 (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

Additional  
work where  
area exceeds  
prescribed  
size

(6) Where a perimeter survey is made under subsection (3), the rental shall be computed on the total area of the claims within the perimeter survey and, where the average area of the claims within the perimeter survey exceeds by more than 15 per cent the prescribed size for a mining claim, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area.

(7) Where additional work is required under subsection (6), the Minister may set out in an order the time within which such work is to be performed and recorded.

Where  
additional  
work  
required

(8) Before a perimeter survey is made, the Minister may order the inspection of the mining claims proposed to be included in the perimeter survey and an inspector or other officer of the Ministry shall prepare and submit to the Minister a report and plan according to the instructions provided by the Minister and the survey shall not be directed to be made unless the Minister is satisfied that the requirements of this Act have been complied with.

Inspection  
before  
perimeter  
survey made

(9) The fee for an inspection under subsection (8) is the prescribed amount, payable in advance, and the Minister may require the applicant to provide the inspector with suitable transportation to the location of the claims.

Fee

**65.—**(1) Subsection 109 (1) of the said Act is amended by striking out “patent” in the first line and by inserting after “claim” in the seventh line “or the perimeter survey of mining claims”.

(2) Subsection 109 (2) of the said Act is repealed.

**66.—**(1) Subsection 110 (1) of the said Act is amended by striking out “acreage” in the third line and in the fourth line and inserting in lieu thereof in each instance “size”.

(2) Subsection 110 (2) of the said Act is amended by striking out “licensee” in the third line and in the fourteenth line and inserting in lieu thereof in each instance “holder”.

**67.** The subheading preceding section 112 of the said Act is struck out and the following substituted therefor:

#### PETROLEUM AND NATURAL GAS

**68.** Parts V and VI of the said Act are repealed.

**69.** The said Act is further amended by adding thereto the following Part:

### PART VII

#### SURFACE MINING OF NON-METALLIC MINERALS

**118.—**(1) Any person who proposes to commence the surface mining of non-metallic minerals, excluding natural gas and petroleum, on Crown land not in a part of Ontario that

Surface  
mining of  
non-metallic  
minerals

R.S.O. 1980,  
c. 378  
1989, c. 23

has been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*, may proceed,

- (a) by applying for and obtaining an aggregate permit or a licence under the *Aggregate Resources Act, 1989*; or
- (b) by complying with the requirements of Part II of this Act.

Lease of  
Crown land

(2) Any person who proposes to commence the surface mining of non-metallic minerals, excluding natural gas and petroleum, on Crown land in a part of Ontario that has been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*, in addition to an aggregate permit or a licence issued under the *Aggregate Resources Act, 1989*, may also obtain a lease from the Crown for the lands affected by complying with the provisions of Part II of this Act.

Staking out  
of mining  
claim

**119.** Notwithstanding that an aggregate permit or a licence has been obtained under the *Aggregate Resources Act, 1989*, any licensee under this Act may stake out a mining claim or claims on Crown land affected by the permit or licence, in which case the provisions of this Act apply and any question of property damage shall be determined in the manner set out in section 92.

**70.—(1)** Subsection 131 (1) of the said Act is amended by striking out “licensees” in the third line and inserting in lieu thereof “persons”.

(2) Subsection 131 (2) of the said Act is amended by striking out “arising before the issue of a certificate of record of a mining claim” in the first and second lines.

(3) Subsection 131 (6) of the said Act is repealed and the following substituted therefor:

Recorder  
may order  
the removal  
of witness  
posts, etc.

- (6) The recorder may make an order directing a holder,
  - (a) to move, remove or alter corner posts, line posts or witness posts and the writing or inscribing thereon;
  - (b) to blaze, re-blaze, move or alter existing or missing claim lines;



- (c) to place or replace metal tags that are missing or have been removed or destroyed after having been affixed to any posts; or
- (d) to place or replace missing or defective posts and to affix tags to such posts,

and the recorder shall set out in the order the time within which the work shall be completed and reported to the recorder.

(6a) Where the work set out in an order under subsection (6) has been completed within the time set out in the order, the claim shall thereafter be deemed to be in compliance with this Act.

Claim  
deemed in  
compliance  
with Act

**(4) Subsection 131 (7) of the said Act is repealed and the following substituted therefor:**

(7) Where the work set out in an order under subsection (6) has not been completed within the time set out in the order, the recorder may extend the time for completing the work or may cancel the claim or claims on which the work was to have been done and shall, in the case of cancellation, by registered letter, mailed not later than the next day after the cancellation, notify the holder of the recorder's action and the reason therefor.

Recorder  
may extend  
time or  
cancel claim

**(5) Subsection 131 (8) of the said Act is repealed and the following substituted therefor:**

(8) This section applies to the manner in which the metal tags have been affixed to the corner posts notwithstanding that the time prescribed for affixing the tags has not expired.

Application

**71. Subsection 133 (2) of the said Act is repealed and the following substituted therefor:**

(2) Where, in the opinion of the Minister, the public interest is affected by a decision, act or thing mentioned in subsection (1), an officer or employee of the Ministry designated by the Minister for that purpose may,

Where public  
interest  
affected

- (a) be added as a party to an appeal taken under subsection (1); or
- (b) take an appeal under subsection (1), in which case no fee in respect of the appeal is payable.

**72.—(1) Subsection 135 (1) of the said Act is repealed and the following substituted therefor:**

Application  
for  
appointment  
for hearing

(1) Application to the Commissioner for an appointment for a hearing may be made in writing by any party to the proceeding upon such notice and to such persons as the Commissioner directs and shall be accompanied by the prescribed fee for recording any order made by the Commissioner in the matter.

**(2) Subsection 135 (4) of the said Act is repealed and the following substituted therefor:**

Leave for  
hearing

(4) In any matter or proceeding, other than an appeal, in any case where leave to take the proceeding is necessary, the Commissioner may give leave upon such terms as to security for costs or otherwise as the Commissioner considers just.

**73.—(1) Clause 137 (1) (b) of the said Act is amended by inserting after “things” in the third line “under oath or otherwise”.**

**(2) Subsection 137 (1) of the said Act is amended by striking out “and” at the end of clause (d) and by adding thereto the following clauses:**

1984, c. 11

(f) upon the application of a party to the proceedings, order the examination of any other party before an official examiner appointed under the *Courts of Justice Act, 1984*; and

(g) order any party to the proceedings who intends to present evidence at the hearing to file with the Commissioner and serve on each of the other parties, prior to the appearance of any witness and within such time as the Commissioner directs, a statement indicating the evidence intended to be relied upon.

**74.—(1) Section 150 of the said Act is amended by adding thereto the following subsections:**

When order  
of Commis-  
sioner takes  
effect

(1a) Every order or judgment of the Commissioner shall take effect immediately upon its signing, subject to any express provision therein.

Oral reasons  
R.S.O. 1980,  
c. 484

(1b) Notwithstanding section 17 of the *Statutory Powers Procedure Act*, the reasons for a decision of the Commissioner may be delivered orally.

(1c) Any party to a proceeding may cause an order or judgment of the Commissioner to be filed in the office of the recorder. Filing of order

(1d) The recorder shall forthwith give notice in writing of the filing by registered mail or otherwise to the solicitors of the parties appearing by solicitor and to the parties not represented by a solicitor. Notice of filing

(1e) Where the order or judgment is not filed with the recorder within fifteen days of the order being signed, the Commissioner shall cause a duplicate thereof to be filed with the recorder. Filing of duplicate order

**(2) Subsections 150 (2) and (3) of the said Act are repealed and the following substituted therefor:**

(2) The Commissioner shall transmit the evidence, the exhibits, the statement, if any, of view or of special knowledge or skill, and the reasons for any order or judgment to the recorder. Transmission of evidence, etc., to recorder

**75. Section 151 of the said Act is repealed and the following substituted therefor:**

**151.** Where a decision of the Commissioner finally disposes of the matter in question so far as the Commissioner is concerned, the Commissioner shall send the order or judgment to the parties by registered mail. Final order or judgment sent to parties

**76. Section 152 of the said Act is repealed and the following substituted therefor:**

**152.** Any party to a proceeding is entitled on payment of the prescribed fee to a certified copy of any order or judgment. Certified copy of order or judgment

**77. Part IX of the said Act is repealed and the following substituted therefor:**

## PART IX

### OPERATION OF MINES

**160.—(1)** In this Part,

Definitions

“abandoned” means the proponent has ceased or suspended indefinitely advanced exploration, mining, or mine production on the site, without rehabilitating the site;



“advanced exploration” means the excavation of an exploratory shaft, adit, or decline, the extraction of material in excess of the prescribed quantity, the installation of a mill for test purposes or any other prescribed work;

“closed out” means that all the requirements of an accepted closure plan have been complied with and is the final stage of closure;

“closure” means the temporary suspension, inactivity or close out of advanced exploration, mining or mine production;

“closure plan” means a plan prepared in the prescribed manner to rehabilitate a project at any stage of closure and includes the information, particulars, maps and plans prescribed, as well as provision in the prescribed manner of financial assurance to the Crown for the performance of the requirements of the closure plan;

“Director” means the Director of Mine Rehabilitation for the mining division or divisions in which is situate the land in respect of which an act, matter or thing is to be done under this Part;

“inactivity” means that advanced exploration, mine production and mining operations on a site have been suspended indefinitely in accordance with a closure plan, and although protective measures are in place on the site, the site is no longer being monitored by the proponent on a continuous basis;

“mine production” means mining that is producing any mineral or mineral-bearing substance either for immediate sale or for stockpiling for ultimate sale;

“progressive rehabilitation” means rehabilitation done continually and sequentially, within a reasonable time, during the entire period that the project continues;

“project” means a mine or the activity of advanced exploration, mining or mine production;

“proponent” means the holder of an unpatented mining claim or licence of occupation or an owner as defined in paragraph 21 of section 1;

“protective measures” means steps taken in accordance with the prescribed standards to prevent personal injury or property damage that is reasonably foreseeable as a result of closure commencing;

“rehabilitate” means measures taken in accordance with the prescribed standards to treat the land or lands on which advanced exploration, mining or mine production has occurred so that the use or condition of the land or lands,

- (a) is restored to its former use or condition, or
- (b) is made suitable for a use that the Director sees fit, and includes taking protective measures;

“site” means the land or lands on which a project is located;

“temporary suspension” means advanced exploration, mining or mine production have been suspended, in accordance with an accepted closure plan, on either a planned or unplanned basis, but the site is being monitored on a continuous basis by the proponent and protective measures are in place.

(2) For greater certainty, but without restricting the scope of this Part, this Part applies to projects including, Application of Part

- (a) the underground mining of minerals, excluding natural gas, petroleum and salt by brining method;
- (b) the surface mining of metallic minerals;
- (c) the surface mining of non-metallic minerals, excluding natural gas and petroleum, on land that is neither Crown land nor land in parts of Ontario that have been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*; R.S.O. 1980, c. 378  
1989, c. 23
- (d) advanced exploration on mining lands.

#### DIRECTORS AND MINERAL DEVELOPMENT OFFICERS

**161.**—(1) The Minister may appoint as Mineral Development Officers such employees of the Ministry as the Minister considers necessary, whose function it is to co-ordinate and expedite communication between the mining industry, the public and affected ministries and agencies of the Government of Ontario.

Mineral  
Development  
Officers

(2) The Minister may appoint an officer or employee of the Ministry as Director of Mine Rehabilitation for each such mining division or group of mining divisions as the appointment specifies.

Directors

## ADVANCED EXPLORATION

Closure plan,  
advanced  
exploration

**161a.**—(1) No proponent shall commence or recommence advanced exploration without providing the Director with notice in the form and manner prescribed and the project may proceed unless, within thirty days of receiving the notice, the Director in writing has required the proponent to,

- (a) give public notice at the prescribed time and in the prescribed form and manner;
- (b) submit a proposed closure plan; or
- (c) comply with both clauses (a) and (b).

Where public  
notice only  
required

(2) Where the Director has required the proponent to give public notice only under clause (1) (a), the project may proceed after public notice has been given.

Changes to  
closure plan

(3) Where the Director has required the proponent to submit a proposed closure plan under clause (1) (b),

- (a) the Director may by written notice require changes to the proposed closure plan; and
- (b) the project shall not proceed until the Director has accepted in writing the closure plan, and the public notice, if required under clause (1) (a), has been given.

## MINE PRODUCTION

Closure plan,  
mine  
production

**161b.**—(1) No proponent shall commence or recommence mine production without,

- (a) providing the Director with notice in the prescribed form and manner;
- (b) giving public notice at the prescribed time and in the prescribed form and manner;
- (c) submitting a proposed closure plan; and
- (d) receiving the Director's written acceptance of the closure plan required by clause (c).

Changes to  
closure plan

(2) The Director may require changes to a proposed closure plan required by clause (1) (c) prior to accepting it.



## PROGRESSIVE REHABILITATION

**161c.**—A proponent shall take all reasonable steps to progressively rehabilitate a site whether or not closure has commenced or an accepted closure plan is in place.

Progressive  
rehabilitation

## CLOSURE PLANS

**161d.**—(1) Every proponent whose project is subject to a closure plan accepted under this Part shall comply with the closure plan.

Compliance  
with closure  
plan

(2) Where closure commences on a site, subject to a closure plan, the proponent shall,

Notice  
closure has  
commenced

- (a) forthwith notify the Director in writing that closure has commenced; and
- (b) comply with the requirements of the closure plan.

(3) Where a project has commenced or recommenced under section 161a or 161b, within twelve months of the commencement or recommencement, and for every twelve-month period following thereafter while the project continues, the proponent shall submit annually to the Director a report prepared in the prescribed manner.

Annual  
report to  
Director

(4) If, on the receipt of the report required under subsection (3) or on the basis of information received from a rehabilitation inspector under subsection 161f (1), the Director has reasonable grounds for believing,

Submission  
of, or  
amendments  
to, closure  
plan

- (a) that the closure plan, including the financial assurance requirement, is inadequate to properly rehabilitate the site because the project has either expanded or other conditions have changed; or
- (b) in the case of an advanced exploration project not currently subject to a closure plan, the project has expanded or other conditions have changed to a point which necessitate a closure plan,

the Director may require by written notice the proponent to submit to the Director a proposed closure plan for the Director's consideration, or, where a closure plan is already in place, to submit proposed amendments to a closure plan, including proposals respecting an increase in the amount of financial assurance required to rehabilitate the site.

Notice of expansion or alteration of project

(5) Where a proponent plans to expand or alter a project, the proponent shall forthwith give written notice in the prescribed form to the Director.

Changes to closure plan

(6) Where the Director has received either proposed amendments to existing closure plans or proposed closure plans under subsection (4), the Director may require changes to the proposed amendments or plan before notifying the proponent that the proposed amendments or plan are acceptable.

Project subject to plan or amended plan

(7) Upon receipt of the written notice of the Director that the proposed amendments or plan that may be required under subsection (4) are acceptable, the project shall operate subject to the plan or amended plan, as the case may be.

#### FINANCIAL ASSURANCE

Form and amount of financial assurance  
R.S.C. 1985,  
c. B-1  
R.S.O. 1980,  
c. 192

**161e.**—(1) The financial assurance required as part of a closure plan shall be in the form of cash, a letter of credit from a bank named in Schedule I to the *Bank Act* (Canada), a bond of a guarantee company approved under the *Guarantee Companies Securities Act* or another form of security acceptable to the Director and shall be in the amount specified in the closure plan accepted by the Director or any amendment thereto.

Order providing for performance of rehabilitation measure

(2) Where the Director has reasonable and probable grounds to believe that any rehabilitation measure required by the accepted closure plan in respect of which financial assurance was given has not been or will not be carried out in accordance with the closure plan, the Director by order may provide for the performance of the rehabilitation measure in the manner set out in subsection (5).

Notice

(3) The Director shall give the proponent written notice of the Director's intention to issue the order referred to in subsection (2) at least forty-five days prior to the date the order is to be issued.

Parties affected

(4) Both the notice and the order under this section shall be directed to the proponent to whom the approval for the closure plan was issued or directed and to any person to the knowledge of the Director that has provided the financial assurance for or on behalf of the proponent to whom the approval of the closure plan was issued or shall be directed to the successor or assignee of such person.

Realization of security

(5) Upon the issuance of an order by the Director under subsection (2), the Crown may,

- (a) use any cash;
- (b) realize any bond or letter of credit; and
- (c) enforce any other security,

provided or obtained as the financial assurance for the performance of the rehabilitation measures and may carry out the rehabilitation measures, or appoint an agent to do so, as the Director considers necessary.

(6) A proponent may apply to the Director for a reduction of the financial assurance to an amount consistent with the financial requirements of the rehabilitation work left to be completed where,

Application  
for reduction  
of financial  
assurance

- (a) work has been performed in accordance with the requirements of an accepted closure plan; or
- (b) a reduction in the financial assurance requirement is justified in a report submitted under subsection 161d (3).

#### REHABILITATION INSPECTORS

**161f.**—(1) For the purposes of monitoring the closure of projects, including mines that have been abandoned, the Minister may designate in writing any person who may, but need not be, an employee of the Ministry as a rehabilitation inspector.

Rehabili-  
tation  
inspectors

(2) For the purpose of carrying out the duties and exercising the powers under this Part, a rehabilitation inspector may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, and in the exercise of that authority may,

Inspections  
by rehabili-  
tation  
inspector

- (a) enter into or onto any mining lands or premises connected or associated with any project or abandoned mine, other than a room or place actually used as a dwelling;
- (b) make such inspections, examinations, inquiries or tests considered necessary in order to determine the nature and extent of any existing or potential hazards on mining lands;
- (c) in any inspection, examination, inquiry or test, be accompanied and assisted by any person having special, expert or professional knowledge of any



matter relevant to the inspection, examination, inquiry or test;

- (d) request the production of any drawings, specifications, licence, document, record or report;
- (e) on giving a receipt therefor, remove any drawing, specifications, licence, document, record or report produced in response to a request under clause (d) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced them;
- (f) inspect any work related to rehabilitation necessary to complete a report to the Director under subsection (1); and
- (g) make reasonable inquiries of any person, orally or in writing.

Inspection to  
be permitted

(3) A proponent shall forthwith on request permit a rehabilitation inspector to carry out any inspection of any place, other than any room actually used as a dwelling, under subsection (2).

Obstruction  
prohibited

(4) No person shall hinder or obstruct a rehabilitation inspector in the lawful performance of duties or furnish the rehabilitation inspector with false information or refuse to furnish information required for the purposes of this Part and the regulations.

Inspection  
warrant

(5) Where a provincial judge or justice of the peace is satisfied on evidence upon oath by a rehabilitation inspector that there is reasonable ground for believing that it is appropriate for the administration of this Part or the regulations made thereunder for the rehabilitation inspector to do anything set out in subsection (2), and that the rehabilitation inspector may not be able to effectively carry out the duties assigned without an order under this section because,

- (a) a person has prevented the rehabilitation inspector from doing anything set out in subsection (2);
- (b) there is reasonable ground to believe that a person may prevent a rehabilitation inspector doing anything set out in subsection (2); or
- (c) it is impractical because of the remoteness of the place to be inspected or because of any other reason, for the rehabilitation inspector to obtain an

order under this section without delay if access is denied,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to do anything set out in subsection (2) and specified in the warrant for the period of time set out in the order.

(6) Where a provincial judge or justice of the peace is satisfied on evidence upon oath of a rehabilitation inspector that there is reasonable and probable ground for believing that,

Search  
warrant

- (a) an offence under this Part has been committed; and
- (b) the entry into and search of a place actually used as a dwelling will afford evidence as to the commission of the offence,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to enter and search the room or place with such reasonable assistance as may be necessary and upon giving a receipt therefor to remove from the room or place any document or thing that may afford evidence of the offence for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the room or place from which they were removed.

(7) A warrant under subsection (5) or (6) shall be executed at reasonable times as specified in the warrant and shall state the date upon which it expires, which shall be not later than fifteen days after the warrant is issued.

When to be  
executed and  
expiry

(8) Copies of, or extracts from, documents or things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Admissibility  
of copies

(9) Upon request, a rehabilitation inspector who exercises a power set out in subsection (2) shall identify himself or herself as a rehabilitation inspector either by the production of a copy of the rehabilitation inspector's designation or in some other manner and shall explain the purpose of the inspection.

Identification

#### EXISTING PROJECTS

**161g.**—(1) Within ninety days of the coming into force of this Part, every proponent of a producing mine or of a mine

Notice to  
Director

from which production is temporarily suspended shall give a notice in writing to the Director that contains the prescribed information relating to that mine.

Determi-  
nation of  
Minister of  
time for  
submission of  
closure plan

(2) On the Director receiving a notice under subsection (1), the Minister shall determine the period of time within which the proponent must submit to the Director a proposed closure plan in respect of that mine.

Notice to  
proponent by  
Director

(3) The Director shall notify in writing a proponent who has given notice under subsection (1) of the period of time determined by the Minister within which the proponent must submit to the Director a proposed closure plan.

Submission  
of closure  
plan to  
Director

(4) A proponent who has received a notice under subsection (3) shall submit the required closure plan to the Director within the period of time specified in the notice.

Notice to  
submit  
closure plan

(5) The Director, within ninety days of the coming into force of this Part, may notify in writing any proponent of advanced exploration that has commenced before and is continuing on the day this Part comes into force of the period of time within which the proponent must submit a proposed closure plan.

Submission  
of closure  
plan to  
Director

(6) A proponent who has received a notice under subsection (5) shall submit the required closure plan to the Director within the time specified in the notice.

Changes to  
closure plan

(7) Prior to the Director informing the proponent that the closure plan required under subsection (4) or (6) is acceptable, the Director may by written notice require changes to the closure plan.

Mine to  
operate  
subject to  
closure plan

(8) On receiving written notification from the Director that the closure plan required under subsection (4) or (6) is acceptable, the project shall operate subject to the closure plan and sections 161c, 161d, 161e and 161f shall apply.

Where  
project  
abandoned  
after Part  
comes into  
force

**161h.**—(1) Notwithstanding section 161g, where a proponent takes steps to abandon the project on either an indefinite or permanent basis after the day this Part comes into force but before the Director informs the proponent that the closure plan required under subsection 161g (4) or (6) is acceptable, the proponent shall give written notice to the Director and shall take all reasonable steps to rehabilitate the site.

Order to  
rehabilitate  
site

(2) Where the Director has reasonable grounds for believing that a proponent has not complied with subsection (1), the Director may order the proponent to rehabilitate the site.



(3) Where, within a reasonable period of time, a proponent fails to comply with the order of the Director made under subsection (2), the Director may declare the project abandoned and may have the Crown or an agent thereof enter onto or into the site to implement rehabilitative measures.

Declaration  
that mine  
abandoned

(4) The Director shall not have the Crown or an agent thereof take the measures referred to in subsection (3) until the Director has given the proponent notice in the prescribed form and manner of the Director's declaration.

Notice of  
declaration

(5) Where under subsection (3) the Director has declared a project abandoned and the proponent has possession of the site as a lessee, the Lieutenant Governor in Council, on the recommendation of the Minister, may declare the lease void, and subsections 94 (12), (13) and (14) apply with necessary modifications.

Declaration  
that lease  
void

(6) The Director shall not take the steps referred to in subsection (5) until the Director has given the proponent the prescribed notice required under subsection (4), including in that notice the Director's intention to recommend to the Minister the steps referred to in subsection (5).

Notice to  
proponent

**161i.**—(1) The Director may by written notice require the proponent of a project the Director considers abandoned on the day this Part comes into force to submit within a specified period of time a proposed closure plan to rehabilitate the site.

Where  
project  
abandoned  
when Part  
comes into  
force

(2) Prior to the Director informing the proponent that a closure plan required under subsection (1) is acceptable, the Director may by written notice require changes to the closure plan.

Changes to  
closure plan

(3) On receiving written notification from the Director that a closure plan required under subsection (1) is acceptable, the proponent shall complete the rehabilitation of the site in accordance with the closure plan.

Rehabili-  
tation of site

(4) Where the proponent of a site fails to comply with the Director's requirements under subsection (1) or (2), the Director may declare the project abandoned and may have the Crown or an agent of the Crown enter onto or into the site to implement rehabilitative measures.

Declaration  
that mine  
abandoned

(5) The Director shall not have the Crown or an agent thereof take the steps referred to in subsection (4) until the Director has given the proponent notice in the prescribed form and manner of the Director's declaration.

Notice of  
declaration

Declaration  
that lease  
forfeited

(6) Where under subsection (4) the Director has declared a project abandoned and the proponent has possession of the site as a lessee, the Lieutenant Governor in Council, on the recommendation of the Minister, may declare the lease void, and subsections 94 (12), (13) and (14) apply with necessary modifications.

Notice to  
proponent

(7) The Director shall not take the steps referred to in subsection (6) until the Director has given the proponent the prescribed notice required under subsection (5), including in that notice the Director's intention to recommend to the Minister the steps referred to in subsection (6).

#### VOLUNTARY SURRENDER OR ABANDONMENT

Refusal of  
voluntary  
surrender

**161j.**—(1) Before accepting the voluntary surrender of lands referred to in section 198, where the Director has reasonable grounds for believing that the proponent may have failed to rehabilitate the site in a manner consistent with a closure plan accepted by the Director, or where no closure plan exists, in accordance with the prescribed standards for rehabilitation, the Minister may refuse to accept the surrender of such lands, and, upon such refusal, the Director may order the proponent to comply with the requirements of the accepted closure plan or to rehabilitate the site in accordance with the prescribed standards.

Application  
for injunction

(2) Where the proponent subject to an order under subsection (1) is an owner, the Director may register the order against the land or lands comprising the site in the proper land registry office and may apply to a Justice of the High Court for an injunction preventing the sale of the land or lands comprising the site, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands.

Refusal of  
consent to  
transfer lease

(3) Where the proponent subject to an order under subsection (1) is a lessee, the Director may recommend to the Minister that the Minister not consent to the transfer of the lease.

Where lease  
expires

(4) Where the proponent subject to a Director's order under subsection (1) is a lessee under a lease which expires during the period in which the Director's order is in force, the lessee is not by reason only of the expiry of the lease relieved of the lessee's duties under this section.

Refusal of  
consent to  
transfer of  
licence

(5) Where the proponent subject to an order under subsection (1) is the holder of a licence of occupation, the Direc-



tor may recommend to the Minister that the Minister not consent to a transfer of the licence.

(6) Notwithstanding section 83, where the proponent is a mining claim holder and where the Director has reasonable grounds for believing that the proponent may have failed to rehabilitate the site in a manner consistent with a closure plan accepted by the Director, or where no closure plan exists, in accordance with the prescribed standards for rehabilitation, the holder may not abandon the mining claim and the Director may order the proponent to comply with the requirement of the accepted closure plan, or to rehabilitate the site in accordance with the prescribed standards.

Where  
mining claim  
not to be  
abandoned

(7) If a person subject to an order under subsection (1) or (6) fails to comply with the order, the Director may,

Realization  
of security

- (a) where a closure plan applies, proceed and realize on the financial assurance under the provisions of section 161e; or
- (b) where no closure plan is in place, have the Crown, or an agent thereof, carry out rehabilitation measures in accordance with the prescribed standards.

#### COST OF WORK COMPLETED

**161k.**—(1) Where under subsection 161h (3) or 161i (4) the Director has the Crown or an agent of the Crown carry out rehabilitation measures, the resulting cost to the Crown is a debt due to the Crown and,

Where cost  
debt due to  
Crown

- (a) forms a lien and a charge on the site in favour of the Crown, realizable by action for sale of any part or all of the land or lands subject to it, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

(2) The cost to the Crown of carrying out the rehabilitative measures under clause 161j (7) (b) is a debt due to the Crown recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

Idem

(3) Where under subsection 161e (5) the Crown or an agent of the Crown carries out rehabilitation measures and the

Idem



financial assurance held by the Crown is insufficient to cover the total cost incurred by the Crown in completing the rehabilitation measures, the extra cost not covered by the financial assurance is a debt due to the Crown which,

- (a) forms a lien and a charge on the site in favour of the Crown realizable by action for sale of any part or all of the land or lands comprising the site subject to the lien, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

Registration  
as charge

(4) Notice of the debt described in subsections (1) and (3) may be registered as a charge in the proper land registry office and no transfer of or other dealing with the site shall take place until the debt is paid and the notice is cancelled.

#### HEARINGS AND APPEALS

Appeal to  
Commissioner

##### **161-1.—(1) Where the Director,**

- (a) requires a closure plan under clause 161d (4) (b) or subsection 161i (1);
- (b) requires changes to either an existing or proposed closure plan under subsection 161a (3), 161b (2), 161d (6), 161g (7) or 161i (2);
- (c) orders the performance of rehabilitation measures under subsection 161e (2);
- (d) orders the proponent to rehabilitate the site under subsection 161h (2); or
- (e) declares a project abandoned under subsection 161h (3) or 161i (4),

the proponent may appeal the Director's requirement, order or declaration to the Commissioner, if within thirty days of receiving the notice of the Director requiring the changes or proposed closure plans referred to in clause (a) or (b), receiving a Director's order referred to in clause (c) or (d), or receiving a Director's declaration referred to in clause (e), the proponent serves the Director with the prescribed notice requiring a hearing before the Commissioner, and, within

thirty days of being served, the Director shall refer the matter to the Commissioner for the hearing.

(2) On the service of a notice on the Director under subsection (1) requiring a hearing before the Commissioner, the requirement, order or decision of the Director is stayed until the disposition of the appeal by the Commissioner, unless upon application with notice by the Director, the Commissioner removes the stay where the matter relates to,

Automatic stay unless removed

- (a) changes to either an existing or proposed closure plan referred to in clause (1) (b); or
- (b) an order requiring the performance of rehabilitation measures referred to in clause (1) (c) or (d).

(3) Notwithstanding subsection (2), where the proponent appeals to the Commissioner under subsection (1) from a Director's requirement for changes to an existing closure plan under subsection 161d (4) and one of the changes required is to increase the amount of financial assurance required for the closure plan, the Commissioner shall refuse to hear the appeal unless the proponent has provided to the Director along with the notice required under subsection (1) the extra amount of financial assurance required under the closure plan to be held by the Crown pending the outcome of the proponent's appeal.

Provision of additional financial assurance

(4) The Commissioner upon application with notice by the proponent may waive the requirement under subsection (3) if the Commissioner considers it just to do so.

Waiver

(5) Upon hearing the appeal of the proponent, the Commissioner may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing.

Power of Commissioner on appeal

(6) Sections 135, 136, 137 and 139 to 152 of this Act apply to appeals under this section with necessary modifications.

Application

(7) An appeal lies to the Divisional Court on a question of law from any decision of the Commissioner under subsection (5) in accordance with the Rules of Civil Procedure.

Appeal to Divisional Court

(8) A party to a hearing before the Commissioner may, within thirty days after receipt of the Commissioner's decision or within thirty days after final disposition of an appeal, if any, under subsection (7), appeal in writing to the Minister on any matter other than a question of law and the Minister shall confirm, alter or revoke the decision of the Commissioner as to the matter in appeal as the Minister considers in the public interest.

Appeal to Minister

## Parties

(9) The person requiring the hearing, the Director and any other person specified by the Commissioner are parties to the hearing.

## SERVICE

## Service of notice

**161m.**—(1) Any notice required to be served under this Part or the regulations made in respect thereto is sufficiently served if delivered personally or sent by registered mail addressed to the person upon whom service is to be made at the last address of service appearing on the records of the Ministry.

## When service deemed made

(2) Service made by registered mail shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes the person did not, acting in good faith, and for a cause beyond that person's control, receive a notice until a later date.

## PART IX-A

## BRINE WELLS

## Definitions

**162.**—(1) In this section,

“brine well” means a hole or opening in the ground for use in brining;

“brining” means the extraction of salt in solution by any method;

“chief engineer” means a person designated by the Minister as chief engineer for the purposes of this section.

## Permit to bore or drill a brine well

(2) No person shall drill or bore a brine well except under the authority of a permit in writing issued by the chief engineer upon application therefor in the prescribed form.

## Permits not issued

(3) A permit shall not be issued,

(a) to authorize a person to drill or bore a brine well on property in which the person does not own, hold or lease, or is not otherwise entitled to, the mining rights; or

(b) where the proposed brine well is nearer the boundary of such property than 150 metres.

## Location of brine well

(4) The chief engineer may reduce or extend the distance referred to in clause (3) (b) where in his or her opinion it is



advisable to do so and shall notify the applicant of any such reduction or extension within thirty days from the date upon which the application for the permit is filed.

(5) A permit is subject to the condition that the brine well in respect of which it is issued is bored or drilled in the location described in the permit. Condition of permit

(6) A permit shall be issued or refused within thirty days from the date on which the application therefor is filed, except that, where notice has been given by the chief engineer under subsection (4), the permit shall be issued upon the receipt by the chief engineer of the applicant's consent thereto. Time for issuance of permit

(7) Where a person drills or bores a brine well, he or she shall forward a log of the drilling or boring in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the drilling or boring operations, and, upon the person's request in writing, the log shall be confidential for a period of six months. Log of drilling operations

(8) A person boring or drilling a brine well shall take such reasonable measures as are necessary to control the infiltration of water from one horizon to any other horizon that may be penetrated during the drilling or boring operations. Protection of water horizons

(9) All brine wells shall be cased and equipped so as to reasonably ensure against the uncontrolled flow of oil, natural gas, brine or water. Protection of deposits

(10) Casing and equipment shall be in good condition and of a thickness and strength adequate to withstand any fluid pressure to which they might normally be subjected. Standard of casing and equipment

(11) Where practicable, all brine wells shall be plugged by the person operating them, before being abandoned, in a manner that will, Plugging of abandoned wells

(a) reasonably ensure that salt horizons and potential oil or natural gas producing horizons are protected; and

(b) retain water and brine in their original formations.

(12) Before commencing to plug a brine well, the person proposing to carry out the plugging operations shall report the particulars thereof to the chief engineer in the prescribed form. Report of proposed plugging

Record of  
plugging  
operations

(13) Where a person plugs a brine well, he or she shall forward a record of the plugging in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the plugging operations.

## PART IX-B

### STATISTICAL RETURNS

Annual  
report

**163.**—(1) For the purposes of tabulation, every owner of a mine shall, on or before the 31st day of March in each year, send to the Minister on the forms provided a report of activities for the preceding year ending on the 31st day of December showing,

- (a) the nature of the work performed and the sums spent on mining and exploration;
- (b) the sums allocated for capital expenditures and repairs;
- (c) the current state of ore reserves;
- (d) the quantity and value of mineral production;
- (e) the number of employees; and
- (f) the revenues and expenses entailed in mining and exploration activities,

and the report shall be accompanied by such other information, plans and documents as the Minister requires, including, without limiting the scope of the requirement, information, plans and documents respecting,

- (g) inventory;
- (h) fuel and electricity consumed;
- (i) mining supplies and materials used;
- (j) non-mining supplies and materials used;
- (k) mining products, shipments and destinations;
- (l) non-mining products;
- (m) production details; and
- (n) wastes produced.

(2) The Minister may require an owner to send monthly or quarterly reports within such times as the Minister specifies. Monthly or quarterly report

(3) In the event of the bankruptcy or winding-up of an owner, the trustee or liquidator shall, at the request of the Minister, send the report to the Minister. Bankruptcy, etc.

(4) The Minister may require a licensee or permittee operating a pit or quarry under the *Aggregate Resources Act, 1989* to send information to the Minister in accordance with this section, and, where the Minister does so, subsections (1), (2) and (3) apply with necessary modifications. Pit or quarry operations 1989, c. 23

**78. Section 175 of the said Act is repealed.**

**79. Section 176 of the said Act is repealed and the following substituted therefor:**

**176.**—(1) Every person who contravenes any provision of Part IX or the regulations made in respect thereto is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues. Penalty for offence against Part IX

(2) Every person who is subject to a Director's order under Part IX and who fails to take all reasonable steps to obey the conditions of the order is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues. Failure to comply with order of Director

(3) Where any person fails to, Application for restraining order

(a) comply with section 161a or 161b before commencing or recommencing a project;

(b) comply with an accepted closure plan as required under subsection 161d (1);

(c) submit the report required under subsection 161d (3);

(d) give the Director notice of a planned expansion or alteration as required by subsection 161d (5); or

(e) give the notice required under subsection 161g (1) or submit a closure plan required under subsection 161g (4) or (6),



the Director may apply at any time to a Justice of the High Court for an order prohibiting advanced exploration, mining or mine production on the site.

Destruction,  
etc., of  
rehabilitation  
works

(4) Every person who alters, destroys, removes or impairs any rehabilitation work made in accordance with Part IX or an accepted closure plan without the written consent of the Minister is guilty of an offence and on conviction is liable to a fine of not more than \$30,000.

Duty of  
directors and  
officers

(5) Every director or officer of a corporation that engages in a project under Part IX has a duty to take all reasonable care to ensure that the corporation complies with the requirements of that Part.

Offence

(6) Every person who has a duty under subsection (5) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Liability of  
directors and  
officers

(7) A director or officer of a corporation is liable to conviction under subsection (6) whether or not the corporation has been prosecuted and convicted.

Increase in  
fine equal to  
monetary  
benefit

(8) The court that convicts a person of an offence under Part IX, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of monetary benefit acquired by, or that accrued to, the person as a result of the commission of the offence, notwithstanding the imposition of the maximum fine provided for that offence.

Offence  
1989, c. 23

**176a.** Every owner of a mine and every licensee or permittee operating a pit or quarry under the *Aggregate Resources Act, 1989* who contravenes section 163, or who makes a report under that section that is, to the owner's, licensee's or operator's knowledge, false in any particular, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for each day on which the offence occurs or is continued.

**80.** Clause 177 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) by a rehabilitation inspector.

**81.** Part XII of the said Act is repealed.

**82.** Section 190 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 48, section 2, is repealed and the following substituted therefor:

**190.**—(1) The Lieutenant Governor in Council may make Regulations regulations generally,

1. governing the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or lands sold or leased as mining lands or recorded as mining claims or locations under this Act or a predecessor thereof, and for the opening, construction or maintenance and use of ditches, aqueducts or raceways through, over or upon such claims, locations or lands for the conveying and passage of water for mining purposes;
2. prescribing the form of any application, notice, report, log, record, dispute, certificate, permit, statement or other document required, permitted or provided for, by or under this Act;
3. prescribing the amount of any fee required to be paid to the Minister, the Ministry, the Commissioner or a recorder by or under this Act;
4. prescribing the manner of staking and the size and form of mining claims and the time and manner of affixing tags in respect thereto;
5. prescribing the annual rental for a licence of occupation;
6. prescribing the information to be shown on a sketch or plan accompanying an application to record a mining claim;
7. prescribing, for the purposes of subsection 62 (1), the conditions on which permission may be given to mine, mill and refine mineral substance from an unpatented mining claim;
8. prescribing the annual units of assessment work to be performed by the holder of a mining claim;
9. prescribing, for the purposes of subsection 76 (2), locations, other than the office of the recorder, in which may be filed assessment work reports and prescribing the date reports in respect of specified types of assessment work shall be filed;
10. prescribing the types of work eligible for assessment work credits, the method of calculating and approv-

ing credits for work performed and the manner of distribution of credits to mining claims;

11. prescribing the manner in which prospecting and regional surveys performed before staking are eligible for assessment work credits;
12. prescribing the manner in which exploration work performed on patented mining claims may be allocated to contiguous unpatented mining claims;
13. prescribing the conditions on which an extension of time for the performing of and filing a report on assessment work may be allowed by a recorder;
14. prescribing the annual rental for the first year for a lease of a mining claim, the rate for each subsequent year and the annual rental for a renewal lease;
15. prescribing the rental rate for the mining rights only in respect of a mining claim;
16. prescribing the additional assessment work to be performed in respect of any excess area of a mining claim or in respect of excess average area of mining claims within a perimeter survey;
17. prescribing, for the purposes of subsection 83 (2), the conditions on which the holder of a mining claim may abandon part of the claim;
18. prescribing the annual rental of a lease referred to in section 95;
19. prescribing the annual rental of a lease or renewal lease of surface rights referred to in section 97;
20. prescribing the methods and procedures to be followed in the surveying of mining claims;
21. prescribing the rate of interest to be imposed in the cases mentioned in subsections 196 (2) and 211 (2);
22. prescribing, for the purposes of subsection 198 (3), the size, form, manner and time of staking out and recording mining claims on land in which an interest is retained after surrender;



23. prescribing, for the purposes of section 202, the amount of tax to be paid for each hectare;
24. prescribing classes of instruments and documents that may be filed through transmission by electronic means in such manner as is prescribed;
25. defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act;
26. prescribing anything that by this Act is to be or may be prescribed.

(2) The Lieutenant Governor in Council may make regulations relating to Part IX, Idem

1. prescribing the manner of preparing closure plans, their form and content, and the information, particulars, maps and plans to be included therein;
2. prescribing standards for rehabilitation;
3. prescribing standards for the protective measures to be taken in respect of the closure of a mine;
4. prescribing the form and manner and time of giving public notice;
5. prescribing the form and manner in which notice is to be given to the Director and to the proponent;
6. prescribing the manner of preparing the annual report to the Director required under subsection 161d (3);
7. prescribing the form of notice to be given under subsection 161d (5);
8. prescribing, for the purposes of subsection 161f (5), the form of a warrant to enter and inspect and, for the purposes of subsection 161f (6), the form of a warrant to enter and search;
9. prescribing, for the purposes of subsection 161g (1), the information to be contained in the notice to be given to the Director relating to a producing mine or to a mine from which production is temporarily suspended;

10. prescribing quantities of material extracted and other types of work that are to be classified as advanced exploration work;
11. prescribing time periods within which duties under Part IX shall be complied with;
12. prescribing anything that by Part IX is to be or may be prescribed.

Minister may  
issue licence,  
lease or  
patent

(3) Notwithstanding anything in this Act, in special circumstances the Minister may, subject to the approval of the Lieutenant Governor in Council, issue a licence of occupation, lease or patent of any mining lands or mining rights on such terms and conditions as the Minister considers appropriate.

**83. Section 192 of the said Act is repealed.**

**84.—(1)** Subsection 193 (1) of the said Act is amended by striking out “Notwithstanding section 192” in the first line.

**(2)** Subsection 193 (2) of the said Act is repealed.

**85. Section 194 of the said Act is amended by adding thereto the following subsections:**

Registration  
of order

(2) The land registrar of the land titles or registry division in which any lands or rights mentioned in a court order made under subsection (1) are situate shall, upon receipt of the order, register it and the order is absolute and conclusive proof of the vesting in the Crown of the lands or rights affected by the order and the vesting in the Crown is not open to attack in any court by reason of the omission of any act or thing leading up to the order repealing or avoiding the patent or lease.

Non-  
application  
of  
R.S.O. 1980,  
cc. 445, 230

(3) Upon registration of the court order in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the lands or rights affected by the order, and the land registrar shall note that fact in the register in red ink.

Opening  
lands for  
prospecting,  
etc.

(4) The lands and mining rights vested in the Crown under this section are not open for prospecting, staking out or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

**86. Section 195 of the said Act is repealed and the following substituted therefor:**

**195.** Where a freehold or leasehold interest in mining lands or mining rights reverts, other than by transfer to the Crown, the land or rights may be dealt with as unpatented Crown land.

Reversion to  
Crown

**87.—(1)** Subsection 196 (2) of the said Act is amended by striking out “rate of 6 per cent” in the eighteenth and nineteenth lines and inserting in lieu thereof “prescribed percentage rate”.

**(2)** Subsection 196 (8) of the said Act is repealed and the following substituted therefor:

**(8)** An application under subsection (2) shall be accompanied by the prescribed fee.

Fee

**88.** Subsection 197 (5) of the said Act is amended by striking out “purchase or” in the fifth line.

**89.** Section 198 of the said Act is repealed and the following substituted therefor:

**198.—(1)** The owner, lessee or licensee of any mining lands or mining rights granted under this Act or any other Act may surrender such lands or mining rights to the Crown only upon such terms as are acceptable to the Minister, and thereupon the Minister may cause a notice of determination to be filed in the proper land registry office.

Voluntary  
surrender of  
mining lands

**(2)** An owner, lessee or licensee who surrenders mining lands or mining rights under subsection (1) may file a notice in the prescribed form with the recorder indicating that such owner, lessee or licensee wishes to retain an interest in the lands or part of the lands thereof, in the form of unpatented mining claims.

Retention as  
unpatented  
mining claims

**(3)** Where a notice has been filed under subsection (2), the owner, lessee or licensee shall stake out or cause to be staked out and recorded in such size, form, manner and time as is prescribed, the lands in which an interest is to be retained.

Staking out  
and recording  
of lands

**(4)** Where mining claims have not been staked out and recorded under subsection (3) within the time prescribed, the recorder may extend the time for staking out and recording or may order that the mining lands or mining rights on which the staking out and recording is to be performed are surrendered and the recorder shall, in the case where an order of surrender is made, by registered letter mailed not later than the next day after the making of the order, notify the owner, lessee or licensee of the recorder's action and the reason therefor.

Extension of  
time by  
recorder or  
order of  
surrender of  
lands



Prospecting,  
etc., on  
surrendered  
lands

(5) Mining lands or mining rights surrendered to the Crown under subsection (1) and which are not recorded as unpatented mining claims under subsection (3) shall not be open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, notice of which shall be published in *The Ontario Gazette* at least two weeks prior thereto.

**90. Section 199 of the said Act is repealed and the following substituted therefor:**

Lands  
forfeited,  
etc., to  
Crown  
R.S.O. 1980,  
c. 95  
1982, c. 4

**199.—**(1) Where mining lands or mining rights,

- (a) are forfeited to the Crown under the *Corporations Act* or the *Business Corporations Act, 1982*, or any predecessor thereof or are forfeited to the Crown for any other cause; or
- (b) have become the property of the Crown by reason of the person last seised thereof or entitled thereto having died intestate and without lawful heirs,

the Minister may cause to be registered in the proper land registry office a notice stating that forfeiture has been effected as mentioned in clause (a) or that the lands or mining rights have become the property of the Crown as mentioned in clause (b), as the case may be, and that by reason thereof the lands or mining rights and every interest therein are forfeited to and vested in, or have become the property of, the Crown, absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture or becoming the property of the Crown, and, subject to subsection (2), such lands shall be dealt with under this Act.

Opening  
forfeited,  
etc., lands  
for  
prospecting,  
etc.

(2) Mining lands or mining rights so forfeited or that have become the property of the Crown are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

**91. Section 200 of the said Act and the preceding heading are repealed and the following substituted therefor:**

#### ANNULMENT OF FORFEITURE OR TERMINATION OF LEASE

Annulment  
of forfeiture,  
etc.

**200.—**(1) The Lieutenant Governor in Council, upon the recommendation of the Minister, may by order revoke, cancel or annul the forfeiture of any mining lands or mining rights under this Act or revoke, cancel or annul the termination of

any lease of mining lands under this Act or relieve from forfeiture any unpatented mining claims on such terms and conditions as the Minister considers appropriate.

(2) Where an order under subsection (1) concerns unpatented mining claims, such order shall be filed in the office of the mining recorder. Filing order in recorder's office

(3) Where an order under subsection (1) concerns leases or freehold patents, the Deputy Minister shall cause the order to be registered in the proper land registry office and thereupon the mining lands or mining rights revert in the owner or lessee of the mining lands or mining rights at the time of forfeiture or termination, his or her heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture or termination and still outstanding. Registering order in land registry office

(4) Where application is made for an order under subsection (1), the Minister may direct the mining lands or mining rights described in the application to be withdrawn from prospecting, staking out, sale or lease until the disposition of the application. Withdrawal of lands from prospecting, etc.

(5) The Minister may direct an application for an order under subsection (1) to be accompanied by the prescribed fee. Fee

**92. The heading preceding section 201 of the said Act is struck out and the following substituted therefor:**

#### MINING LAND TAX

**93. Section 201 of the said Act is repealed and the following substituted therefor:**

**201.** In this Part,

Definitions

“municipality” means a city, town, village, township or improvement district;

“tax” means a tax under this Part.

**94. Section 202 of the said Act is repealed and the following substituted therefor:**

**202.** There shall be paid to the Crown in each year a tax in the prescribed amount for each hectare on any lands or mining rights to which this Part applies. Amount of tax

**95. Section 203 of the said Act is amended by striking out “acreage” in the first line.**

**96.—**(1) Subsection 204 (1) of the said Act is amended by striking out “acreage” in the twenty-third line.

(2) Subsection 204 (2) of the said Act is amended by striking out “acreage” in the first line.

**97.** Clause 205 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) land has been subdivided,

(i) by a registered plan of subdivision, or

(ii) by a reference plan into parts for city, town, village or summer resort purposes,

and there is no severance of the surface and mining rights.

**98.** Section 207 of the said Act is amended by striking out “acreage” in the third line.

**99.** Section 208 of the said Act is amended by striking out “acreage” in the fourth line.

**100.** Section 209 of the said Act is amended by striking out “acreage” in the second line.

**101.** Subsection 210 (1) of the said Act is amended by striking out “acreage” in the fourth line and in the eighth line.

**102.—**(1) Subsection 211 (1) of the said Act is amended by striking out “acreage” in the first line.

(2) Subsection 211 (2) of the said Act is repealed and the following substituted therefor:

Fee

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

**103.—**(1) Subsection 212 (1) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 48, section 3, is further amended by striking out “acreage” in the fourth line and by striking out “certified mail” in the sixth line and inserting in lieu thereof “mail or delivered by courier service”.

(2) Subsection 212 (2) of the said Act is amended by striking out “acreage” in the sixth line.



(3) Subsection 212 (3) of the said Act is amended by striking out "acreage" in the first line.

**104.** Section 214 of the said Act is repealed.

**105.—**(1) Subsection 215 (1) of the said Act is amended by striking out "acreage" in the first line.

(2) Subsection 215 (2) of the said Act is amended by striking out "acreage" in the second line.

**106.** Section 217 of the said Act is amended by striking out "acreage" in the second line.

**107.** The Schedule to the said Act is repealed.

**108.—**(1) Every prospector's licence issued or renewed under the *Mining Act*, that is in good standing on the day this section comes into force, expires on the date set out on the licence or renewal thereof, and thereafter, in the case of a licence held by a natural person, may be renewed under section 22 of the *Mining Act*, as amended by section 12 of this Act.

Prospector's  
licence  
R.S.O. 1980,  
c. 268

(2) The expiry provision in subsection (1) does not apply to a prospector's licence that was issued or renewed as a lifetime licence.

Idem

(3) Where, before the 24th day of October, 1989,

Dispute or  
court  
proceeding

(a) a dispute has been filed under section 56 of the *Mining Act*; or

(b) a proceeding has been commenced in the Supreme Court to declare forfeited or void or to cancel or annul any Crown patent issued for mining lands, mining claims or mining rights,

the provisions of the *Mining Act*, as they existed before the coming into force of this Act, continue to apply to the dispute or proceeding until finally disposed of.

(4) Subsections 56 (7) and (8) of the *Mining Act*, as enacted by section 34 of this Act, apply to any re-staking by or on behalf of a transferee that has been commenced before, on or after the 24th day of October, 1989, unless, before that day, the matter in dispute has been finally disposed of under the *Mining Act*.

Re-staking

(5) Section 96 of the *Mining Act*, as it read before its re-enactment by section 61 of this Act, continues in force and

Freehold  
patent

applies in respect of any application for a patent made under that section before the 24th day of October, 1989.

Relief from  
forfeiture by  
Mining and  
Lands  
Commissioner

**109.**—(1) Where forfeiture occurs under clause 85 (1) (c), (d) or (e) of the *Mining Act* as those clauses read before the coming into force of section 52 of this Act or under clause 85 (1) (c) of the *Mining Act*, as re-enacted by section 52 of this Act, and where an application is made to the Mining and Lands Commissioner within six months of the forfeiture, the Commissioner may make an order on such terms and conditions as the Commissioner considers just relieving the claim from forfeiture and extending the time for performing or reporting the work, or both, but no such application may be made to the Commissioner after the expiration of eight months from the day section 52 of this Act comes into force.

Performance  
of assessment  
work or  
application  
for lease

(2) Where, on the day section 76 of the *Mining Act*, as re-enacted by section 46 of this Act, comes into force, 200 days of assessment work have been performed and recorded by the holder of a mining claim under section 76 of the *Mining Act* as it read before its re-enactment by section 46 of this Act, the holder of the mining claim shall,

- (a) perform and file such annual units of assessment work as are prescribed under section 76 of the *Mining Act*, as re-enacted by section 46 of this Act; or
- (b) apply and pay for a lease of the claim within the time set out in subsection 94 (2) of the *Mining Act*, as it read before its re-enactment by section 59 of this Act, or, where applicable, within the time set out in an order of the Mining and Lands Commissioner under section 86 of the *Mining Act* as it read before its re-enactment by section 53 of this Act.

Rental rate,  
subsisting  
leases

**110.**—(1) A subsisting lease that has been issued or renewed under section 94, 95 or 97 or subsection 190 (2) of the *Mining Act*, as those provisions read before the day sections 59, 60, 62 and 82 of this Act come into force, shall continue to bear the existing rental rate until the expiration of five years from that day.

Certain leases  
issued after  
ss. 59, 60,  
62, 82, in  
force

(2) Where a lease applied for before the 24th day of October, 1989 is issued after the day sections 59, 60, 62 and 82 of this Act come into force, the lease shall bear the rental rate provided for by the *Mining Act*, as that Act read before the day sections 59, 60, 62 and 82 of this Act come into force, until the expiration of five years from the day those sections come into force.

(3) Where a lease to which subsection (1) or (2) applies is renewed under section 94 of the *Mining Act*, as amended by section 59 of this Act, the lease shall, until the expiration of five years from the day sections 59, 60, 62 and 82 of this Act come into force, bear the rental rate set out in subsection 94 (8) of the *Mining Act*, as that section read before its re-enactment by section 59 of this Act. Renewal  
leases

(4) Notwithstanding the provisions of a lease, after the expiration of five years from the day sections 59, 60, 62 and 82 of this Act come into force, every lease shall bear the rental rate set out in the *Mining Act* as amended by this Act. When new  
rental rates  
in Act prevail

**111.**—(1) This Act, except subsection 34 (3) and section 51, comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

(2) Subsection 34 (3) and section 51 come into force on the day this Act receives Royal Assent. Idem

**112.** The short title of this Act is the *Mining Amendment Act, 1989*. Short title



CHAPTER 63

An Act to provide for Freedom of Information and  
Protection of Individual Privacy in  
Municipalities and Local Boards

*Assented to December 14th, 1989*

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## CHAPITRE 63

### Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux

*Sanctionnée le 14 décembre 1989*

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## Purposes

**1.** The purposes of this Act are,

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
  - (i) information should be available to the public,
  - (ii) necessary exemptions from the right of access should be limited and specific, and
  - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

## Definitions

**2.—(1)** In this Act,

“head”, in respect of an institution, means the individual or body determined to be head under section 3; (“personne responsable”)

“Information and Privacy Commissioner” and “Commissioner” mean the Commissioner appointed under subsection 4 (1) of the *Freedom of Information and Protection of Privacy Act, 1987*; (“commissaire à l’information et à la protection de la vie privée”, “commissaire”)



## Article

**DROIT DU PARTICULIER  
CONCERNÉ PAR LES  
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SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

**1 La présente loi a pour objets :**

Objets

- a) de procurer un droit d'accès à l'information régie par une institution conformément aux principes suivants :

- (i) l'information doit être accessible au public,
- (ii) les exceptions au droit d'accès doivent être limitées et précises,
- (iii) les décisions relatives à la divulgation de l'information devraient faire l'objet d'un examen indépendant de l'institution qui a le contrôle de l'information;

- b) de protéger la vie privée des particuliers que concernent les renseignements personnels détenus par une institution et accorder à ces particuliers un droit d'accès à ces renseignements.

**2 (1) Les définitions qui suivent s'appliquent à la présente loi.** Définitions

«banque de renseignements personnels» Ensemble de renseignements personnels systématisés et susceptibles de récupération d'après le nom d'un particulier, d'après un

“institution” means,

- (a) a municipal corporation, including a metropolitan, district or regional municipality or the County of Oxford,
- (b) a school board, public utilities commission, hydro-electric commission, transit commission, suburban roads commission, public library board, board of health, police commission, conservation authority, district welfare administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act*,
- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations; (“institution”)

R.S.O. 1980,  
c. 302

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b); (“exécution de la loi”)

“Minister” means the Chairman of the Management Board of Cabinet; (“ministre”)

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

numéro d'identification ou un signe individuel qui lui est attribué. («personal information bank»)

«commissaire à l'information et à la protection de la vie privée» et «commissaire» Le commissaire nommé en vertu du paragraphe 4 (1) de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. (1987, chap. 25) («Information and Privacy Commissioner», «Commissioner»)

«document» Document qui reproduit des renseignements sans égard à leur mode de transcription, que ce soit sous forme imprimée, sur film, au moyen de dispositifs électroniques ou autrement. S'entend en outre :

- a) de la correspondance, des notes, livres, plans, cartes, dessins, diagrammes, illustrations ou graphiques, photographies, films, microfilms, enregistrements sonores, bandes magnétoscopiques, documents lisibles par machine, de tout autre matériel documentaire sans égard à leur forme ou à leurs caractéristiques et de toute reproduction de ces éléments d'information;
- b) sous réserve des règlements, du document qui n'a pas pris forme mais qui peut être constitué au moyen de matériel et de logiciel informatiques ou d'autre matériel de stockage de données, de même que des connaissances techniques normalement utilisés par une institution, à partir de documents lisibles par machine que celle-ci a en sa possession. («record»)

«exécution de la loi» S'entend :

- a) du maintien de l'ordre;
- b) des enquêtes ou inspections qui aboutissent ou peuvent aboutir à des instances devant les tribunaux judiciaires ou administratifs, si ceux-ci peuvent imposer une peine ou une sanction à l'issue de ces instances;
- c) de la tenue des poursuites visées à l'alinéa b). («law enforcement»)

«institution» :

- a) une municipalité, notamment une municipalité



- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

"personal information bank" means a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual; ("banque de renseignements personnels")

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

régionale, de communauté urbaine ou de district, ou le comté d'Oxford;

- b) un conseil scolaire, une commission de services publics, une commission hydro-électrique, une commission de transport, une commission de voirie de banlieue, un conseil d'une bibliothèque publique, un conseil de santé, une commission de police, un office de protection de la nature, un conseil d'administration de district de l'aide sociale, une régie locale des services publics, un conseil de planification, une régie des routes locales, un village partiellement autonome ou un comité ou un conseil de gestion conjoints créés en vertu de la *Loi sur les municipalités*;

L.R.O. 1980,  
chap. 302

- c) un organisme, un conseil, une commission, une personne morale ou une autre entité désignés comme institution dans les règlements. («institution»)

«ministre» Le président du Conseil de gestion du gouvernement. («Minister»)

«personne responsable» À l'égard d'une institution, s'entend du particulier ou de l'organisme qui est désigné en cette qualité en vertu de l'article 3. («head»)

«règlements» Les règlements pris en application de la présente loi. («regulations»)

«renseignements personnels» Renseignements consignés ayant trait à un particulier qui peut être identifié. S'entend notamment :

- a) des renseignements concernant la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial ou familial de celui-ci;
- b) des renseignements concernant l'éducation, les antécédents médicaux, psychiatriques, psychologiques, criminels ou professionnels de ce particulier ou des renseignements reliés à sa participation à une opération financière;
- c) d'un numéro d'identification, d'un symbole ou d'un autre signe individuel qui lui est attribué;
- d) de l'adresse, du numéro de téléphone, des empreintes digitales ou du groupe sanguin de ce particulier;

- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

"regulations" means the regulations made under this Act. ("règlements")

Personal  
information

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

Bodies  
considered  
part of  
municipal  
corporation

(3) Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of "institution" in subsection (1) or designated under clause (c) of the definition of "institution" in subsection (1) is deemed to be a part of the municipal corporation for the purposes of this Act if all of its members or officers are appointed or chosen by or under the authority of the council of the municipal corporation.

Designation  
of head

**3.—**(1) The members of the council of a municipal corporation may by by-law designate from among themselves an individual or a committee of the council to act as head of the municipal corporation for the purposes of this Act.

Idem

(2) The members elected or appointed to the board, commission or other body that is an institution other than a municipal corporation may designate in writing from among themselves an individual or a committee of the body to act as head of the institution for the purposes of this Act.

If no  
designation

(3) If no person is designated as head under this section, the head shall be,

- (a) the council, in the case of a municipal corporation; and



- e) de ses opinions ou de ses points de vue personnels, sauf s'ils se rapportent à un autre particulier;
- f) de la correspondance ayant explicitement ou implicitement un caractère personnel et confidentiel, adressée par le particulier à une institution, de même que des réponses à cette correspondance originale susceptibles d'en révéler le contenu;
- g) des opinions et des points de vue d'une autre personne au sujet de ce particulier;
- h) du nom du particulier, s'il figure parmi d'autres renseignements personnels qui le concernent, ou si sa divulgation risque de révéler d'autres renseignements personnels au sujet du particulier. («personal information»)

(2) Les renseignements personnels excluent ceux qui concernent un particulier décédé depuis plus de trente ans.

Renseignements  
personnels

(3) Les organismes, conseils, commissions, personnes morales ou autres entités qui ne sont pas mentionnés à l'alinéa b) de la définition d'«institution» au paragraphe (1) ou désignés en vertu de l'alinéa c) de cette définition, sont réputés faire partie d'une municipalité pour l'application de la présente loi si tous leurs membres, ou leurs dirigeants sont nommés ou choisis par le conseil de la municipalité, ou nommés ou choisis en vertu des pouvoirs de ce conseil.

Entités réputées faire partie d'une municipalité

**3** (1) Les membres du conseil de la municipalité peuvent, par règlement municipal, désigner une personne membre du conseil ou un comité de celui-ci à titre de personne responsable de la municipalité pour l'application de la présente loi.

Désignation de la  
personne  
responsable

(2) Les membres élus ou nommés à un conseil, à une commission ou à un autre organisme qui est une institution, à l'exception d'une municipalité, peuvent, par écrit, désigner une personne membre de l'organisme ou un comité de celui-ci à titre de personne responsable de l'institution pour l'application de la présente loi.

Idem

(3) Si personne n'est désigné à titre de personne responsable en vertu du présent article, la personne responsable est, selon le cas :

Aucune  
désignation

- a) le conseil municipal, dans le cas d'une municipalité;

- (b) the members elected or appointed to the board, commission or other body in the case of an institution other than a municipal corporation.

## PART I

### FREEDOM OF INFORMATION

#### ACCESS TO RECORDS

##### Right of access

**4.—**(1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or part falls within one of the exemptions under sections 6 to 15.

##### Severability of record

(2) Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

##### Obligation to disclose

**5.—**(1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

##### Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

##### Contents of notice

(3) The notice shall contain,

- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that if the person makes representations forthwith to the head as to why the record or part should not be disclosed, those representations will be considered by the head.

- b) les membres élus ou nommés au conseil, à la commission ou à l'autre organisme, dans le cas d'une institution qui n'est pas une municipalité.

## PARTIE I

### ACCÈS À L'INFORMATION

#### ACCÈS AUX DOCUMENTS

**4** (1) Chacun a un droit d'accès à un document ou une partie de celui-ci dont une institution a le contrôle ou la garde, sauf si le document ou la partie fait l'objet d'une exception aux termes des articles 6 à 15. Droit d'accès

(2) La personne responsable de l'institution qui reçoit une demande d'accès à un document qui contient des renseignements faisant l'objet d'une exception en vertu des articles 6 à 15, divulgue la partie du document qui peut raisonnablement en être extraite sans divulguer ces renseignements. Extrait du document

**5** (1) Malgré toute autre disposition de la présente loi, la personne responsable qui a des motifs raisonnables et probables de croire qu'il y va de l'intérêt public, divulgue au public ou aux personnes intéressées dans les meilleurs délais, compte tenu des circonstances, le document révélateur d'un grave danger pour la santé ou la sécurité du public ou pour l'environnement. Obligation de divulguer un document

(2) La personne responsable fait aviser dans la mesure du possible toutes les personnes concernées par les renseignements que contient le document visé au paragraphe (1) avant d'en divulguer la teneur. Avis

(3) L'avis comporte : Teneur de l'avis

- a) une déclaration portant que la personne responsable a l'intention de communiquer la totalité ou une partie d'un document et que cette divulgation peut avoir une incidence sur les intérêts de la personne;
- b) une description de la teneur du document ou de la partie du document qui concerne cette personne;
- c) une déclaration portant que la personne responsable tiendra compte des observations que lui présentera sans délai cette personne, si cette dernière expose les motifs pour lesquels le document ne devrait pas être divulgué, même en partie.



Representations

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed.

#### EXEMPTIONS

Draft  
by-laws, etc.

**6.—**(1) A head may refuse to disclose a record,

- (a) that contains a draft of a by-law or a draft of a private bill; or
- (b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

- (a) in the case of a record under clause (1) (a), the draft has been considered in a meeting open to the public;
- (b) in the case of a record under clause (1) (b), the subject-matter of the deliberations has been considered in a meeting open to the public; or
- (c) the record is more than twenty years old.

Advice or  
recommendations

**7.—**(1) A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator;

(4) La personne qui reçoit l'avis visé au paragraphe (2) peut présenter sans délai à la personne responsable ses observations exposant les motifs pour lesquels ce document ne devrait pas être divulgué, même en partie. Observations

#### EXCEPTIONS

**6** (1) Une personne responsable peut refuser de divulguer un document : Projets de règlements municipaux

- a) qui contient un projet de règlement municipal ou un avant-projet de loi privée;
- b) qui révèle l'essentiel des délibérations d'un conseil, d'une commission ou d'une autre entité ou d'un comité de ceux-ci lors d'une réunion si une loi autorise la tenue de cette réunion en l'absence du public.

(2) Malgré le paragraphe (1), la personne responsable ne doit pas refuser de divulguer un document en vertu de ce paragraphe si, selon le cas : Exception

- a) le projet de règlement municipal ou l'avant-projet de loi privée a fait l'objet d'une réunion ouverte au public, dans le cas d'un document visé à l'alinéa (1) a);
- b) l'objet des délibérations a fait l'objet d'une réunion ouverte au public, dans le cas d'un document visé à l'alinéa (1) b);
- c) le document date de plus de vingt ans.

**7** (1) La personne responsable peut refuser de divulguer un document qui aurait pour effet de révéler les conseils ou les recommandations émanant d'un dirigeant ou d'un employé d'une institution ou d'un expert-conseil dont les services ont été retenus par cette institution. Conseils ou recommandations

(2) Malgré le paragraphe (1), la personne responsable ne doit pas refuser, en vertu de ce paragraphe, de divulguer un document qui comporte l'un des éléments suivants : Exceptions

- a) de la documentation portant sur des faits;
- b) un sondage statistique;
- c) le rapport d'un estimateur;

- (d) an environmental impact statement or similar record;
- (e) a report or study on the performance or efficiency of an institution;
- (f) a feasibility study or other technical study, including a cost estimate, relating to a policy or project of an institution;
- (g) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (h) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program;
- (i) a report of a committee or similar body within an institution, which has been established for the purpose of preparing a report on a particular topic;
- (j) a report of a body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (k) the reasons for a final decision, order or ruling of an officer or an employee of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution.

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if the record is more than twenty years old.

Law  
enforcement

**8.—(1)** A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;



- d) un rapport sur d'éventuelles répercussions sur l'environnement ou un document semblable;
- e) le rapport ou le résultat d'une étude relative au rendement ou à l'efficacité d'une institution;
- f) une étude de faisabilité ou autre étude technique, y compris une estimation des coûts, reliée à une politique ou à un projet d'une institution;
- g) le rapport qui comporte les résultats d'une recherche effectuée sur le terrain préalablement à la formulation d'une politique proposée;
- h) la proposition ou le plan définitifs en vue de la modification d'un programme existant ou de l'établissement d'un nouveau programme d'une institution, y compris son estimation budgétaire;
- i) le rapport d'un comité ou d'une entité semblable d'une institution chargés de dresser un rapport sur une question précise;
- j) le rapport d'une entité liée à une institution et constituée dans le but de mener des enquêtes suivies de rapports ou de recommandations destinés à cette institution;
- k) les motifs à l'appui de la décision, de l'arrêté, de l'ordonnance, de l'ordre ou de la directive définitifs du fonctionnaire ou d'un employé d'une institution et rendus à la fin ou au cours de l'exercice d'un pouvoir discrétionnaire conféré par un texte législatif ou un projet mis en application par cette institution, ou en vertu de ceux-ci.

(3) Malgré le paragraphe (1), la personne responsable ne doit pas refuser, en vertu de ce paragraphe, de divulguer un document si le document date de plus de vingt ans. Idem

**8** (1) La personne responsable peut refuser de divulguer un document si la divulgation devrait avoir pour effet probable : Exécution de la loi

- a) de faire obstacle à une question qui concerne l'exécution de la loi;

- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

Idem

(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

- b) de faire obstacle à l'enquête menée préalablement à une poursuite judiciaire ou qui y aboutira vraisemblablement;
- c) de révéler des techniques et procédés d'enquête qui sont présentement ou qui seront vraisemblablement en usage dans l'exécution de la loi;
- d) de divulguer l'identité d'une source d'information confidentielle reliée à l'exécution de la loi ou de divulguer des renseignements obtenus uniquement de cette source;
- e) de constituer une menace à la vie ou à la sécurité physique d'un agent d'exécution de la loi ou d'une autre personne;
- f) de priver une personne de son droit à un procès équitable ou à un jugement impartial;
- g) de faire obstacle à l'obtention de renseignements secrets reliés à l'exécution de la loi à l'égard de certaines organisations ou de certaines personnes ou de les révéler;
- h) de révéler un document qui a été confisqué à une personne par un agent de la paix, conformément à une loi ou à un règlement;
- i) de compromettre la sécurité d'un immeuble ou d'un véhicule servant au transport de certains articles ou au système ou mode de protection de ces articles, dont la protection est normalement exigée;
- j) de faciliter l'évasion d'une personne légalement détenue;
- k) de compromettre la sécurité d'un centre de détention légale;
- l) de faciliter la perpétration d'un acte illégal ou d'entraver la répression du crime.

(2) La personne responsable peut refuser de divulguer un document : Idem

- a) qui constitue un rapport dressé au cours de l'exécution de la loi, de l'inspection ou de l'enquête



- (b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Refusal to  
confirm or  
deny  
existence of  
record

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

Exception

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario.

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

Relations  
with  
governments

**9.—(1)** A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c); or

menées par un organisme chargé d'assurer et de réglementer l'observation de la loi;

- b) relié à l'exécution de la loi et dont la divulgation constituerait une infraction à une loi du Parlement;
- c) relié à l'exécution de la loi et dont la divulgation donnerait raisonnablement lieu de craindre que son auteur, la personne qui est citée ou dont les mots ont été paraphrasés dans le document, ne soit l'objet de poursuites civiles;
- d) où figurent les renseignements reliés aux antécédents, à la surveillance ou à la mise en liberté d'une personne confiée au contrôle ou à la surveillance d'une administration correctionnelle.

(3) La personne responsable peut refuser de confirmer ou de nier l'existence du document visé au paragraphe (1) ou (2).

Refus de confirmer ou de nier l'existence d'un document

(4) Malgré l'alinéa (2) a), la personne responsable divulgue le document qui constitue un rapport dressé dans le cadre d'inspections de routine effectuées par un organisme autorisé à assurer et à réglementer l'observation d'une loi particulière de l'Ontario.

Exception

(5) Les paragraphes (1) et (2) ne s'appliquent pas au document qui a trait au degré de succès atteint dans le cadre d'un programme d'exécution de la loi, y compris les analyses statistiques, sauf si la divulgation de ce document est susceptible de nuire, de faire obstacle ou de porter atteinte à la poursuite des objectifs visés à ces paragraphes.

Idem

**9** (1) La personne responsable refuse de divulguer un document si la divulgation devrait avoir pour effet probable de révéler des renseignements confidentiels confiés à l'institution :

Rapports avec des gouvernements

- a) par le gouvernement du Canada;
- b) par le gouvernement de l'Ontario ou d'une province ou d'un territoire du Canada;
- c) par le gouvernement d'un pays ou d'un État étrangers;
- d) par un organisme d'un gouvernement visé à l'alinéa a), b) ou c);

- (e) an international organization of states or a body of such an organization.

Idem

(2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

Third party  
information

**10.—**(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Consent to  
disclosure

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

Economic  
and other  
interests

**11.** A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution if the disclosure could



- e) par une organisation internationale d'États ou par l'une de ses entités.

(2) La personne responsable peut divulguer un document auquel s'applique le paragraphe (1) si le gouvernement, l'organisme ou l'organisation qui a confié les renseignements à l'institution y consent.

Idem

**10** (1) La personne responsable refuse de divulguer un document qui révèle un secret industriel ou des renseignements d'ordre scientifique, technique, commercial, financier ou qui ont trait aux relations de travail, dont le caractère confidentiel est implicite ou explicite et dont la divulgation aurait pour effet probable :

Renseignements de tiers

- a) de nuire gravement à la situation concurrentielle ou d'entraver gravement les négociations contractuelles ou autres d'une personne, d'un groupe de personnes ou d'une organisation;
- b) d'interrompre la communication de renseignements semblables à l'institution, alors qu'il serait dans l'intérêt public que cette communication se poursuive;
- c) de causer des pertes ou des profits indus à une personne, un groupe de personnes, un comité, une institution ou un organisme financiers;
- d) de divulguer des renseignements fournis à un conciliateur, un médiateur, un agent des relations de travail ou une autre personne nommée pour régler un conflit de relations de travail, ou de divulguer le rapport de l'une de ces personnes.

(2) La personne responsable peut divulguer le document visé au paragraphe (1) si la personne concernée par les renseignements y consent.

Consentement à la divulgation

**11** La personne responsable peut refuser de divulguer un document qui comporte :

Intérêts économiques et autres

- a) des secrets industriels ou des renseignements d'ordre financier, commercial, scientifique ou technique qui sont la propriété d'une institution et qui ont une valeur pécuniaire actuelle ou éventuelle;
- b) des renseignements résultant d'une recherche effectuée par l'employé d'une institution et dont la divul-

reasonably be expected to deprive the employee of priority of publication;

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) questions that are to be used in an examination or test for an educational purpose;
- (i) submissions under the *Municipal Boundary Negotiations Act, 1981* by a party municipality or other body before the matter to which the submissions relate is resolved under that Act.

1981, c. 70

Solicitor-client  
privilege

**12.** A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

Danger to  
safety or  
health

**13.** A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

gation aurait pour effet probable de retirer à l'employé la primauté de la publication;

- c) des renseignements dont la divulgation aurait pour effet probable de nuire aux intérêts économiques d'une institution ou à sa situation concurrentielle;
- d) des renseignements dont la divulgation aurait pour effet probable de nuire aux intérêts financiers d'une institution;
- e) des positions, projets, lignes de conduite, normes ou instructions devant être observés par une institution ou pour son compte dans le cadre d'une négociation actuelle ou éventuelle;
- f) des projets relatifs à la direction du personnel ou à la gestion d'une institution qui n'ont pas encore été mis en application ou rendus publics;
- g) des renseignements, y compris les projets, les politiques ou les entreprises proposés d'une institution dont la divulgation aboutirait vraisemblablement à la divulgation prématurée d'un programme à l'état de projet ou occasionnerait des pertes ou profits indus à une personne;
- h) des questions devant servir à un examen ou d'un test à des fins scolaires;
- i) des observations faites par une municipalité qui est partie à une question ou par une autre entité en vertu de la *Loi de 1981 sur les négociations de limites municipales*, si la question à laquelle ces observations sont reliées n'a pas été résolue aux termes de cette loi.

1981, chap. 70

**12** La personne responsable peut refuser de divulguer un document protégé par le secret professionnel de l'avocat. Il en est de même d'un document élaboré par l'avocat-conseil employé ou engagé par une institution, ou pour le compte de celui-ci, qui l'utilise soit dans la communication de conseils juridiques, soit à l'occasion ou en prévision d'une instance.

Secret professionnel de l'avocat

**13** La personne responsable peut refuser de divulguer le document dont la divulgation aurait pour effet probable de compromettre gravement la santé ou la sécurité d'un particulier.

Menace à la santé ou à la sécurité



Personal  
privacy

**14.—(1)** A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
  - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
  - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
  - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Criteria re  
invasion of  
privacy

**(2)** A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

**14** (1) La personne responsable ne divulgue des renseignements personnels qu'au particulier concerné par ceux-ci, sauf :

Vie privée

- a) à la demande écrite ou du consentement préalables du particulier concerné si ce dernier a lui-même le droit d'y avoir accès;
- b) lors d'une situation d'urgence où il existe un risque immédiat pour la santé ou la sécurité d'un particulier, si un avis de la divulgation est ensuite envoyé par courrier au particulier concerné par les renseignements à sa dernière adresse connue;
- c) les renseignements personnels recueillis et conservés dans le but précis de constituer un document accessible au grand public;
- d) en vertu d'une loi de l'Ontario ou du Canada qui autorise expressément la divulgation;
- e) à des fins de recherche si :
  - (i) la divulgation est conforme aux conditions ou à l'utilisation envisagées au moment où ces renseignements ont été divulgués, recueillis ou obtenus,
  - (ii) les fins de recherche à l'origine de la divulgation ne peuvent être raisonnablement atteintes que si les renseignements sont divulgués sous une forme qui permette l'identification individuelle,
  - (iii) la personne devant recevoir le document a accepté de se conformer aux conditions relatives à la sécurité et au caractère confidentiel qui sont prescrites par les règlements;
- f) la divulgation ne constitue pas une atteinte injustifiée à la vie privée.

(2) Aux fins de déterminer si la divulgation de renseignements personnels constitue une atteinte injustifiée à la vie privée, la personne responsable tient compte des circonstances pertinentes et examine notamment si :

Critères :  
atteinte injustifiée à la vie privée

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Presumed  
invasion of  
privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;



- a) la divulgation est souhaitable parce qu'elle permet au public de surveiller de près les activités de l'institution;
- b) l'accès aux renseignements personnels peut promouvoir une amélioration de la santé et de la sécurité publiques;
- c) l'accès aux renseignements personnels rendra l'achat de biens et de services susceptible d'un choix plus judicieux;
- d) les renseignements personnels ont une incidence sur la juste détermination des droits qui concernent l'auteur de la demande;
- e) le particulier visé par les renseignements personnels risque d'être injustement lésé dans ses intérêts pécuniaires ou autres;
- f) les renseignements personnels sont d'une nature très délicate;
- g) l'exactitude et la fiabilité des renseignements personnels sont douteuses;
- h) le particulier visé par les renseignements personnels les a communiqués à l'institution à titre confidentiel;
- i) la divulgation est susceptible de porter injustement atteinte à la réputation d'une personne dont il est fait mention dans le document.

(3) Est présumée constituer une atteinte injustifiée à la vie privée, la divulgation de renseignements personnels :

Atteinte présumée à la vie privée

- a) relatifs aux antécédents, au diagnostic, à la maladie, au traitement ou à l'évaluation d'ordre médical, psychiatrique ou psychologique;
- b) qui ont été recueillis et peuvent être identifiés comme partie du dossier d'une enquête reliée à une contravention possible à la loi, sauf dans la mesure où la divulgation est nécessaire aux fins d'instituer des poursuites judiciaires ou de continuer l'enquête;

- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

**Limitation**

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or
- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

**Refusal to confirm or deny existence of record**

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

**Information soon to be published**

**15.** A head may refuse to disclose a record if,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record

- c) relatifs à l'admissibilité aux prestations d'aide sociale ou de service social ou à l'établissement du niveau des prestations;
- d) qui ont trait aux antécédents professionnels ou académiques;
- e) qui ont été relevés dans une déclaration d'impôt ou recueillis à des fins de perception fiscale;
- f) qui précisent la situation financière, le revenu, l'actif, le passif, la situation nette, les soldes bancaires, les antécédents ou les activités d'ordre financier ou la solvabilité d'un particulier;
- g) qui comportent des recommandations ou des évaluations personnelles, des renseignements ayant trait à la moralité ou à des évaluations de personnel;
- h) qui indiquent la race, l'origine ethnique, l'orientation sexuelle ou les croyances ou allégeances religieuses ou politiques du particulier.

(4) Malgré le paragraphe (3), ne constitue pas une atteinte injustifiée à la vie privée, la divulgation portant sur les renseignements suivants :

Restrictions

- a) le classement, les barèmes de traitement et d'avantages sociaux ou les responsabilités professionnelles d'un particulier qui est ou a été dirigeant ou employé d'une institution;
- b) les modalités d'ordre financier ou autres d'un contrat de louage de services personnels intervenu entre un particulier et une institution.

(5) La personne responsable peut refuser de confirmer ou de nier l'existence d'un document dont la divulgation constituerait une atteinte injustifiée à la vie privée.

Refus de confirmer ou de nier l'existence d'un document

**15** La personne responsable peut refuser de divulguer un document si, selon le cas :

Publication prochaine des renseignements

- a) le document ou les renseignements qu'il comporte ont déjà été publiés ou sont accessibles au public;
- b) la personne responsable a des motifs raisonnables de croire que le document ou les renseignements



will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Exemptions  
not to apply

**16.** An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

#### ACCESS PROCEDURE

Request

**17.—(1)** A person seeking access to a record shall make a request for access in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

Sufficiency of  
detail

**(2)** If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Definition  
1987, c. 25

**18.—(1)** In this section, “institution” includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act, 1987*. (“institution”)

Request to  
be forwarded

**(2)** The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

Transfer of  
request

**(3)** If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

seront publiés par une institution dans les quatre-vingt-dix jours de la demande ou au cours de la période de temps additionnelle nécessaire à leur impression ou à leur traduction à cette fin.

**16** Les exceptions à la divulgation visées aux articles 7, 9, 10, 11, 13 et 14 ne s'appliquent pas si la nécessité manifeste de divulguer le document dans l'intérêt public l'emporte sans conteste sur les fins visées par les exceptions.

Non-application des exceptions

#### PROCÉDURE D'ACCÈS

**17** (1) L'auteur de la demande d'accès à un document s'adresse par écrit à l'institution qui, à son avis, a la garde ou le contrôle du document. Il fournit les détails suffisants qui permettront à un employé expérimenté de l'institution à la suite d'une démarche normale, d'identifier le document.

Demande

(2) Dans le cas d'insuffisance de la description du document requis, l'institution en avise l'auteur de la demande et lui fournit l'aide nécessaire afin de formuler celle-ci à nouveau et de la rendre conforme au paragraphe (1).

Détails suffisants

**18** (1) Dans le présent article, «institution» s'entend en outre d'une institution au sens de l'article 2 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. («institution»)

Définition 1987, chap. 25

(2) La personne responsable de l'institution qui reçoit une demande d'accès à un document dont l'institution n'a ni la garde ni le contrôle, fait les recherches raisonnables afin de déterminer si une autre institution en a la garde ou le contrôle. Si la personne responsable détermine que tel est le cas, la personne responsable, dans les quinze jours de la réception de la demande :

Acheminement de la demande

- a) d'une part, renvoie celle-ci à l'institution concernée;
- b) d'autre part, avise par écrit l'auteur de la demande du renvoi à une autre institution.

(3) La personne responsable de l'institution qui reçoit une demande d'accès à un document, lequel, à son avis, intéresse davantage une autre institution, peut transférer la demande, et, si nécessaire, le document lui-même à cette autre institution dans les quinze jours de la réception de la demande. La personne responsable qui effectue ce transfert en informe alors par écrit l'auteur de la demande.

Transfert de la demande

Greater  
interest

(4) For the purpose of subsection (3), another institution has a greater interest in a record than the institution that receives the request for access if,

- (a) the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.

When  
transferred  
request  
deemed  
made

(5) Where a request is forwarded or transferred under subsection (2) or (3), the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it.

Notice by  
head

**19.** Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20 and 21, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

Extension of  
time

**20.—(1)** A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.



(4) Pour l'application du paragraphe (3), un document intéresse davantage une institution autre que celle qui reçoit la demande d'accès si, selon le cas :

Ressort d'une autre institution

- a) le document a d'abord été constitué par l'autre institution ou pour son compte;
- b) l'autre institution a reçu la première ce document ou une copie de celui-ci, si le document n'a pas d'abord été constitué par une institution ou pour son compte.

(5) La demande renvoyée ou transférée en vertu du paragraphe (2) ou (3) est réputée présentée à l'autre institution le jour de sa réception par l'institution originale.

Date de la demande

**19** Sous réserve des articles 20 et 21, lorsqu'une personne présente une demande d'accès à un document, la personne responsable de l'institution qui reçoit la demande ou, si la demande fait l'objet d'un renvoi ou d'un transfert aux termes de l'article 18, la personne responsable de l'institution destinataire du renvoi ou du transfert, prend, dans les trente jours de sa réception, les mesures suivantes :

Avis donné par la personne responsable

- a) elle avise par écrit l'auteur de la demande qu'elle lui donnera ou non accès à la totalité ou à une partie du document;
- b) si l'accès doit être accordé, elle donne accès à la totalité ou à une partie du document à l'auteur de la demande et prend les mesures nécessaires à sa production, si besoin est.

**20** (1) La personne responsable peut proroger le délai imparti à l'article 19 pour un temps raisonnable compte tenu des circonstances si, selon le cas :

Prorogation du délai

- a) la demande comporte la production ou la consultation d'un grand nombre de documents et que l'observation du délai imparti aurait pour effet d'entraver abusivement les activités normales de l'institution;
- b) il est nécessaire d'avoir des consultations avec une personne à l'extérieur de l'institution afin de répondre à la demande et que ces consultations ne peuvent pas être normalement terminées avant l'expiration du délai imparti.

Notice of  
extension

(2) A head who extends the time limit under subsection (1) shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and
- (c) that the person who made the request may ask the Commissioner to review the extension.

Notice to  
affected  
person

**21.—**(1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 10 (1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14 (1) (f).

Contents of  
notice

(2) The notice shall contain,

- (a) a statement that the head intends to disclose a record or part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

Time for  
notice

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, if there has been an extension of a time limit under subsection 20 (1), within that extended time limit.

(2) La personne responsable qui proroge le délai imparti aux termes du paragraphe (1) en informe par écrit l'auteur de la demande et précise notamment :

Avis de prorogation

- a) la durée du délai prorogé;
- b) les motifs à l'appui;
- c) le fait que l'auteur de la demande peut s'adresser au commissaire afin d'obtenir une révision de la prorogation.

**21** (1) Avant de permettre l'accès à un document, la personne responsable, donne à la personne concernée un avis écrit conformément au paragraphe (2), lorsque la personne responsable a des raisons de croire :

Avis à la personne concernée

- a) que le document comporte certains renseignements visés au paragraphe 10 (1) susceptibles de porter atteinte aux intérêts d'une personne autre que l'auteur de la demande;
- b) qu'il s'agit de renseignements personnels dont la divulgation pourrait constituer une atteinte injustifiée à la vie privée pour l'application de l'alinéa 14 (1) f).

(2) L'avis comporte :

Teneur de l'avis

- a) une mention que la personne responsable a l'intention de divulguer la totalité ou une partie d'un document susceptible de porter atteinte aux intérêts de la personne concernée;
- b) un exposé de la teneur de la totalité ou de la partie du document qui a trait à cette personne;
- c) une mention que la personne concernée peut, dans les vingt jours de l'envoi de l'avis, faire des observations à la personne responsable exposant les raisons pour lesquelles le document ne devrait pas être divulgué en totalité ou en partie.

(3) L'avis visé au paragraphe (1) est donné dans les trente jours de la réception de la demande d'accès, ou au cours du délai prorogé aux termes du paragraphe 20 (1).

Délai pour donner l'avis



Notice of  
delay

(4) A head who gives notice to a person under subsection (1) shall also give the person who made the request written notice of delay, setting out,

- (a) that the disclosure of the record or part may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will within thirty days decide whether or not to disclose the record.

Representa-  
tion re  
disclosure

(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

Representa-  
tion in  
writing

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally.

Decision re  
disclosure

(7) The head shall decide whether or not to disclose the record or part and give written notice of the decision to the person to whom the information relates and the person who made the request within thirty days after the notice under subsection (1) is given, but not before the earlier of,

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given.

Notice of  
head's  
decision to  
disclose

(8) A head who decides to disclose a record or part under subsection (7) shall state in the notice that,

- (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and

(4) La personne responsable qui donne un avis en vertu du paragraphe (1) donne en outre à l'auteur de la demande un avis écrit du retard qui énonce les faits suivants :

Avis du retard

- a) la divulgation de la totalité ou d'une partie de ce document peut porter atteinte aux intérêts d'un tiers;
- b) l'occasion est fournie à ce tiers de faire des observations relativement à la divulgation du document;
- c) la personne responsable rendra dans les trente jours sa décision de divulguer ou non le document.

(5) La personne concernée par les renseignements peut, dans les vingt jours de l'envoi de l'avis donné en vertu du paragraphe (1), faire des observations à la personne responsable exposant les raisons pour lesquelles le document ou la partie de celui-ci ne devrait pas être divulgué.

Observations  
relatives à la  
divulgarion

(6) Les observations faites aux termes du paragraphe (5) le sont par écrit sauf si la personne responsable permet qu'elles soient faites de vive voix.

Observations  
par écrit

(7) Dans les trente jours de l'envoi de l'avis visé au paragraphe (1), la personne responsable rend sa décision de permettre ou non la divulgation du document ou de la partie de celui-ci et informe par écrit de sa décision la personne concernée par les renseignements ainsi que l'auteur de la demande. Toutefois, la personne responsable ne prend pas ces mesures avant la première des éventualités suivantes à se réaliser :

Décision de  
permettre la  
divulgarion

- a) la réception de la réponse à l'avis donné à la personne concernée par les renseignements;
- b) l'expiration d'un délai de vingt et un jours après l'envoi de l'avis.

(8) La personne responsable qui décide de divulguer un document ou une partie de celui-ci en vertu du paragraphe (7) mentionne dans l'avis :

Avis de la  
décision de la  
personne  
responsable

- a) d'une part, que la personne concernée par les renseignements peut interjeter appel de la décision devant le commissaire dans les trente jours de l'envoi de l'avis;

- (b) the person who made the request will be given access to the record or part unless an appeal of the decision is commenced within thirty days after the notice is given.

Access to be  
given unless  
affected  
person  
appeals

(9) A head who decides under subsection (7) to disclose the record or part shall give the person who made the request access to the record or part within thirty days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision.

Contents of  
notice of  
refusal

**22.—**(1) Notice of refusal to give access to a record or part under section 19 shall set out,

- (a) where there is no such record,
  - (i) that there is no such record, and
  - (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
- (b) where there is such a record,
  - (i) the specific provision of this Act under which access is refused,
  - (ii) the reason the provision applies to the record,
  - (iii) the name and position of the person responsible for making the decision, and
  - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(2) A head who refuses to confirm or deny the existence of a record as provided in subsection 8 (3) (law enforcement) or subsection 14 (5) (unjustified invasion of personal privacy) shall state in the notice given under section 19,

- (a) that the head refuses to confirm or deny the existence of the record;
- (b) the provision of this Act on which the refusal is based;



- b) d'autre part, que l'auteur de la demande aura accès à la totalité ou à une partie du document à moins qu'un appel de la décision ne soit interjeté dans les trente jours de l'envoi de l'avis.

(9) À la suite de sa décision à cet effet prise en vertu du paragraphe (7), la personne responsable donne à l'auteur de la demande, dans les trente jours de l'envoi de l'avis en vertu du paragraphe (7), accès au document ou à une partie de celui-ci, à moins que le commissaire n'ait reçu une demande de révision de la décision de la part de la personne concernée par les renseignements.

Accès permis  
sauf appel

**22** (1) L'avis du refus de donner accès à la totalité ou à une partie du document en vertu de l'article 19, énonce les faits suivants :

Teneur de  
l'avis de  
refus

- a) si le document n'existe pas :
- (i) qu'il n'existe pas de tel document,
  - (ii) que l'auteur de la demande peut interjeter appel devant le commissaire de la question de l'existence du document;
- b) si le document existe :
- (i) la disposition précise de la présente loi à l'appui du refus,
  - (ii) le motif pour lequel la disposition s'applique au document,
  - (iii) le nom et le titre de l'auteur de la décision,
  - (iv) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire.

(2) La personne responsable qui refuse de confirmer ou de nier l'existence d'un document aux termes du paragraphe 8 (3) (exécution de la loi) ou du paragraphe 14 (5) (atteinte injustifiée à la vie privée), mentionne dans l'avis donné en vertu de l'article 19 les points suivants :

Idem

- a) le fait que la personne responsable refuse de confirmer ou de nier l'existence du document;
- b) la disposition de la présente loi sur laquelle se fonde le refus;

- (c) the name and office of the person responsible for making the decision; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(3) A head who refuses to disclose a record or part under subsection 21 (7) shall state in the notice given under subsection 21 (7),

- (a) the specific provision of this Act under which access is refused;
- (b) the reason the provision named in clause (a) applies to the record;
- (c) the name and office of the person responsible for making the decision to refuse access; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Deemed refusal

(4) A head who fails to give the notice required under section 19 or subsection 21 (7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

Copy of record

**23.**—(1) Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.

Access to original record

(2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.

Copy of part

(3) A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

- c) le nom et le titre de l'auteur de la décision;
- d) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire afin d'obtenir la révision de la décision.

(3) La personne responsable qui refuse de divulguer un document en totalité ou en partie en vertu du paragraphe 21 (7), mentionne dans l'avis donné en vertu de ce paragraphe les points suivants :

Idem

- a) la disposition précise de la présente loi à l'appui du refus;
- b) le motif pour lequel la disposition visée à l'alinéa a) s'applique au document;
- c) le nom et le titre de l'auteur de la décision de refuser l'accès;
- d) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire afin d'obtenir la révision de la décision.

(4) La personne responsable qui, relativement à un document, fait défaut de donner l'avis qu'exige l'article 19 ou le paragraphe 21 (7), est réputée avoir donné avis de son refus de permettre l'accès au document le dernier jour du délai imparti à cette fin.

Avis réputé  
donné du  
refus

**23** (1) Sous réserve du paragraphe (2), il est délivré à la personne à qui il y est donné accès en vertu de la présente loi, copie de la totalité ou d'une partie du document visé, sauf si la nature ou la longueur de ce document en rendent la reproduction trop difficile. Dans ce cas, il est donné à cette personne l'occasion de consulter la totalité ou la partie du document.

Copie du  
document

(2) La personne responsable, dans la mesure du possible, donne à la personne qui en fait la demande, l'occasion de consulter un document en totalité ou en partie.

Accès à  
l'original du  
document

(3) Si une personne consulte un document en totalité ou en partie et souhaite en faire copier des extraits, il lui est donné copie de ces extraits sauf si la nature ou la longueur de ces extraits en rendent la reproduction trop difficile.

Extraits



## INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication  
of  
information  
re institutions

**24.**—(1) The Minister shall cause to be published a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made; and
- (b) the title of the head of the institution.

Idem

(2) The Minister shall cause the compilation to be published within one year of the coming into force of this Act and at least once every three years thereafter.

Information  
available for  
inspection

**25.**—(1) A head shall cause to be made available for inspection and copying by the public information containing,

- (a) a description of the organization and responsibilities of the institution;
- (b) a list of the general classes or types of records in the custody or control of the institution;
- (c) the title, business telephone and business address of the head; and
- (d) the address to which a request under this Act should be made.

Idem

(2) The head shall ensure that the information made available is amended as required to ensure its accuracy.

Annual  
report of  
head

**26.**—(1) A head shall make an annual report, in accordance with subsection (2), to the Commissioner.

Contents of  
report

(2) A report made under subsection (1) shall specify,

- (a) the number of requests under this Act for access to records made to the institution;
- (b) the number of refusals by the head to disclose a record, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;

## PUBLICATION ET ACCESSIBILITÉ DE L'INFORMATION

**24** (1) Le ministre fait publier un répertoire des institutions, qui indique à l'égard de chacune :

Publication de l'information concernant les institutions

- a) l'endroit où doit être présentée la demande d'accès à un document;
- b) le titre de la personne responsable de l'institution.

(2) Le ministre fait publier le répertoire dans l'année qui suit l'entrée en vigueur de la présente loi et au moins une fois tous les trois ans par la suite.

Idem

**25** (1) Une personne responsable rend accessible au public un dossier de renseignements afin que le public puisse l'examiner et en prendre des copies. Le dossier comporte :

Renseignements rendus accessibles au public

- a) un exposé de la structure et des responsabilités de l'institution;
- b) un répertoire des catégories générales ou des genres de documents dont l'institution a la garde ou le contrôle;
- c) les titre, adresse et numéro de téléphone d'affaires de la personne responsable;
- d) l'adresse à laquelle une demande aux termes de la présente loi doit être présentée.

(2) La personne responsable veille à ce que les renseignements rendus accessibles au public soient modifiés en cas de besoin afin d'en assurer l'exactitude.

Idem

**26** (1) La personne responsable présente un rapport annuel au commissaire conformément au paragraphe (2).

Rapport annuel de la personne responsable

(2) Le rapport préparé en vertu du paragraphe (1) fournit les précisions suivantes :

Teneur du rapport

- a) le nombre de demandes d'accès aux documents présentées à l'institution en vertu de la présente loi;
- b) le nombre de refus de divulguer un document de la part de la personne responsable, les dispositions de la présente loi à l'appui de ce refus, ainsi que la fréquence de renvoi à chacune des dispositions invoquées;

- (c) the number of uses or purposes for which personal information is disclosed if the use or purpose is not included in the statements of uses and purposes set forth under clauses 34 (1) (d) and (e);
- (d) the amount of fees collected by the institution under section 45; and
- (e) any other information indicating an effort by the institution to put into practice the purposes of this Act.

## PART II

### PROTECTION OF INDIVIDUAL PRIVACY

#### COLLECTION AND RETENTION OF PERSONAL INFORMATION

##### Application of Part

**27.** This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

##### Definition

**28.—**(1) In this section and in section 29, “personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act. (“renseignements personnels”)

##### Collection of personal information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

##### Manner of collection

**29.—**(1) An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*, 1987;
- (c) the Commissioner has authorized the manner of collection under clause 46 (c);



- c) la quantité de fins et d'usages non visés par les relevés énoncés aux alinéas 34 (1) d) et e) pour lesquels des renseignements personnels sont divulgués;
- d) le montant des droits perçus par l'institution aux termes de l'article 45;
- e) les renseignements relatifs aux mesures prises par l'institution afin de réaliser les objets de la présente loi.

## PARTIE II

### PROTECTION DE LA VIE PRIVÉE

#### COLLECTE ET CONSERVATION DES RENSEIGNEMENTS PERSONNELS

**27** La présente partie ne s'applique pas aux renseignements personnels qui sont conservés dans le but de constituer un document accessible au grand public.

Champ d'application de la partie

**28** (1) Dans le présent article et dans l'article 29, «renseignements personnels» s'entend en outre des renseignements qui ne sont pas consignés et qui constituent, par ailleurs, des renseignements personnels au sens de la présente loi. («personal information»)

Définition

(2) Nul ne doit recueillir des renseignements personnels pour le compte d'une institution à moins d'y être autorisé expressément par une loi, ou à moins que ces renseignements servent à l'exécution de la loi ou soient nécessaires au bon exercice d'une activité autorisée par la loi.

Collecte des renseignements personnels

**29** (1) L'institution ne doit recueillir les renseignements personnels que directement du seul particulier concerné par ces renseignements, sauf si :

Mode de collecte des renseignements

- a) ce particulier a autorisé un autre mode de collecte;
- b) leur divulgation à l'institution concernée est autorisée aux termes de l'article 32 ou de l'article 42 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*;
- c) leur mode de collecte a reçu l'autorisation du commissaire en vertu de l'alinéa 46 c);

1987, chap. 25

R.S.O. 1980,  
c. 89

- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute.

Notice to  
individual

(2) If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

Exception

(3) Subsection (2) does not apply if,

- (a) the head may refuse to disclose the personal information under subsection 8 (1) or (2) (law enforcement);
- (b) the Minister waives the notice; or
- (c) the regulations provide that the notice is not required.

- d) les renseignements sont consignés dans le rapport d'un organisme de renseignements au sens de la *Loi sur les renseignements concernant le consommateur*;
- e) les renseignements sont recueillis aux fins de déterminer les candidats possibles à une distinction ou à un prix en reconnaissance de réalisations exceptionnelles ou de services éminents;
- f) les renseignements sont recueillis aux fins d'une instance poursuivie ou envisagée devant soit un tribunal, soit un tribunal administratif à caractère judiciaire ou quasi-judiciaire;
- g) les renseignements sont recueillis aux fins de l'exécution de la loi;
- h) un autre mode de collecte des renseignements est autorisé par une loi ou en vertu de celle-ci.

L.R.O. 1980,  
chap. 89

(2) Si les renseignements personnels sont recueillis pour le compte d'une institution, la personne responsable informe au moyen d'un avis le particulier concerné par les renseignements des faits suivants :

Avis  
particulier

- a) l'autorité légale invoquée à cette fin;
- b) les fins principales auxquelles doivent servir ces renseignements personnels;
- c) les titre, adresse et numéro de téléphone d'affaires d'un fonctionnaire ou d'un employé de l'institution qui peut renseigner le particulier au sujet de cette collecte.

(3) Le paragraphe (2) ne s'applique pas si, selon le cas :

Exception

- a) la personne responsable peut refuser de divulguer les renseignements personnels en vertu du paragraphe 8 (1) ou (2) (exécution de la loi);
- b) le ministre accorde une dispense relativement à l'avis;
- c) les règlements prévoient que l'avis n'est pas requis.



Retention of  
personal  
information

**30.**—(1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

Standard of  
accuracy

(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

Exception

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes.

Disposal of  
personal  
information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations.

#### USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of  
personal  
information

**31.** An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act, 1987*.

1987, c. 25

Where  
disclosure  
permitted

**32.** An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is

**30** (1) L'institution qui s'est servie des renseignements personnels les conserve durant le délai prescrit par les règlements afin de fournir l'occasion au particulier concerné par ces renseignements d'y obtenir lui-même accès. Conservation des renseignements personnels

(2) La personne responsable d'une institution veille à ce que seuls soient utilisés les renseignements personnels consignés dans ses documents qui sont exacts et à jour. Norme d'exactitude

(3) Le paragraphe (2) ne s'applique pas aux renseignements personnels recueillis aux fins de l'exécution de la loi. Exception

(4) La personne responsable dispose des renseignements personnels dont l'institution a le contrôle conformément aux règlements. Disposition des renseignements personnels

#### UTILISATION ET DIVULGATION DES RENSEIGNEMENTS PERSONNELS

**31** Une institution ne doit pas utiliser les renseignements personnels dont elle a la garde ou le contrôle, sauf : Utilisation des renseignements personnels

- a) si la personne concernée par ces renseignements les a identifiés spécifiquement et a consenti à leur utilisation;
- b) aux fins pour lesquelles ils ont été obtenus ou recueillis ou à des fins compatibles;
- c) à des fins qui justifient leur divulgation à l'institution en vertu de l'article 32 ou de l'article 42 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. 1987, chap. 25

**32** Une institution ne doit pas divulguer les renseignements personnels dont elle a la garde ou le contrôle, sauf : Divulgation permise

- a) conformément à la partie I;
- b) si la personne concernée par ces renseignements les a identifiés spécifiquement et a consenti à leur divulgation;
- c) aux fins pour lesquelles ils ont été obtenus ou recueillis ou à des fins compatibles;
- d) si la divulgation est faite au dirigeant ou à l'employé d'une institution à qui ce document est nécessaire dans l'exercice de ses fonctions et que cette divul-

necessary and proper in the discharge of the institution's functions;

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
  - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
  - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.

Consistent  
purpose

**33.** The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure.



gation est essentielle et appropriée à l'acquittement des fonctions de l'institution;

- e) afin de se conformer aux dispositions d'une loi de la Législature ou du Parlement, à un accord ou à un arrangement intervenus en vertu d'une telle loi ou à un traité;
- f) si la divulgation est faite par une institution chargée de l'exécution de la loi :
  - (i) soit à l'organisme semblable d'un pays étranger en vertu d'un arrangement, d'un accord écrit, d'un traité ou d'un pouvoir conféré par une loi,
  - (ii) soit à un autre organisme du Canada chargé de l'exécution de la loi;
- g) si la divulgation est faite à une institution quelconque ou à un organisme chargé de l'exécution de la loi au Canada aux fins de faciliter une enquête menée en vue d'une action en justice ou qui aboutira vraisemblablement à une action en justice;
- h) lors d'une situation d'urgence ayant une incidence sur la santé ou la sécurité d'un particulier, si un avis de la divulgation est envoyé sans tarder au particulier concerné par les renseignements à sa dernière adresse connue;
- i) dans une situation relative à un événement de famille afin de faciliter la communication avec un proche parent ou un ami d'un particulier blessé, malade ou décédé;
- j) au ministre;
- k) au commissaire à l'information et à la protection de la vie privée;
- l) au gouvernement du Canada ou au gouvernement de l'Ontario, afin de faciliter la vérification des programmes cofinancés.

**33** Seule constitue une fin compatible au sens des alinéas 31 b) et 32 c), la fin invoquée à l'appui de l'utilisation ou de la divulgation de renseignements personnels à laquelle le particulier concerné par les renseignements pourrait raisonnable-

Fin  
compatible

## PERSONAL INFORMATION BANKS

Personal  
information  
bank index

**34.—**(1) A head shall make available for inspection by the public an index of all personal information banks in the custody or under the control of the institution setting forth, in respect of each personal information bank,

- (a) its name and location;
- (b) the legal authority for its establishment;
- (c) the types of personal information maintained in it;
- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and
- (g) the policies and practices applicable to the retention and disposal of the personal information.

Ensure  
accuracy

(2) The head shall ensure that the index is amended as required to ensure its accuracy.

Inconsistent  
use or  
disclosure

**35.—**(1) A head shall attach or link to personal information in a personal information bank,

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 34 (1) (d); and
- (b) a record of any disclosure of that personal information to a person other than a person described in clause 34 (1) (e).

Idem

(2) A record of use or disclosure under subsection (1) forms part of the personal information to which it is attached or linked.

ment s'attendre lorsque ceux-ci ont été obtenus du particulier directement.

#### BANQUES DE RENSEIGNEMENTS PERSONNELS

**34** (1) La personne responsable rend accessible pour fin d'examen par le public un répertoire des banques de données de renseignements personnels dont l'institution a la garde ou le contrôle et qui indique à l'égard de chaque banque :

Répertoire  
des banques  
de ren-  
seignements  
personnels

- a) son nom et le lieu où elle est située;
- b) l'autorité légale invoquée à l'appui de sa constitution;
- c) le genre de renseignements personnels qui y sont conservés;
- d) les usages réguliers faits de ces renseignements personnels;
- e) les personnes à qui les renseignements personnels sont divulgués de façon régulière;
- f) les catégories de particuliers au sujet desquels des renseignements personnels sont conservés;
- g) les politiques et pratiques applicables à la conservation et à la suppression des renseignements personnels.

(2) La personne responsable veille à ce que le répertoire soit modifié en cas de besoin afin d'en assurer l'exactitude.

Assurance de  
l'exactitude

**35** (1) La personne responsable annexe ou incorpore aux renseignements personnels dans une banque de renseignements personnels :

Utilisation ou  
divulcation  
incompatibles

- a) un document décrivant l'usage fait de ces renseignements personnels à une fin autre que celle décrite à l'alinéa 34 (1) d);
- b) un document décrivant la divulgation faite de ces renseignements personnels à une personne autre que celle décrite à l'alinéa 34 (1) e).

(2) Un document visé au paragraphe (1) qui décrit l'usage ou la divulgation fait partie des renseignements personnels auxquels il est annexé ou incorporé.

Idem



RIGHT OF INDIVIDUALS TO WHOM PERSONAL INFORMATION  
RELATES TO ACCESS AND CORRECTION

Right of  
access to  
personal  
information

**36.—**(1) Every individual has a right of access to,

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

Right of  
correction

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

Request

**37.—**(1) An individual seeking access to personal information about the individual shall make a request for access in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.

Access  
procedures

(2) Subsections 4 (2) and 17 (2) and sections 18, 19, 20, 21, 22 and 23 apply with necessary modifications to a request made under subsection (1).

Compre-  
hensible  
form

(3) If access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general conditions under which the personal information is stored and used.

DROIT DU PARTICULIER CONCERNÉ PAR LES  
RENSEIGNEMENTS  
PERSONNELS À L'ACCÈS ET À LA RECTIFICATION

**36** (1) Tout particulier a un droit d'accès :

Droit d'accès  
aux ren-  
seignements  
personnels

- a) aux renseignements personnels qui le concernent qui sont mis en mémoire dans une banque de renseignements personnels dont une institution a la garde ou le contrôle;
- b) aux autres renseignements personnels qui le concernent dont une institution a la garde ou le contrôle et que le particulier indique avec suffisamment de précision pour permettre à l'institution de les récupérer sans trop de difficulté.

(2) Tout particulier à qui est accordé l'accès aux renseignements personnels aux termes du paragraphe (1) a le droit :

Droit à la  
rectification

- a) de demander la rectification des renseignements personnels si, à son avis, ceux-ci sont erronés ou incomplets;
- b) d'exiger que soit annexée à ces renseignements une déclaration de désaccord qui fasse mention de la rectification demandée mais non effectuée;
- c) d'exiger que la personne ou l'entité à qui les renseignements ont été divulgués au cours de l'année qui précède la demande de rectification ou la déclaration de désaccord soient avisées de ceux-ci.

**37** (1) Le particulier qui sollicite l'accès aux renseignements personnels qui le concernent en fait la demande par écrit à l'institution qui, à son avis, a le contrôle ou la garde de ces renseignements. Il identifie la banque de renseignements personnels ou identifie d'une autre façon l'endroit où sont consignés les renseignements.

Demande

(2) Les paragraphes 4 (2) et 17 (2) ainsi que les articles 18, 19, 20, 21, 22 et 23 s'appliquent avec les adaptations nécessaires à la demande présentée aux termes du paragraphe (1).

Procédure  
d'accès

(3) La personne responsable veille à ce que les renseignements personnels soient communiqués, le cas échéant, au particulier sous une forme intelligible et d'une façon qui permet de connaître les conditions générales de leur stockage et de leur utilisation.

Forme  
intelligible

## Exemptions

**38.** A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information;
- (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by an institution if the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
- (d) that is medical information if the disclosure could reasonably be expected to prejudice the mental or physical health of the individual; or
- (e) that is a research or statistical record.

## PART III

## APPEAL

Right to  
appeal

**39.—(1)** A person may appeal any decision of a head under this Act to the Commissioner if,

- (a) the person has made a request for access to a record under subsection 17 (1);
- (b) the person has made a request for access to personal information under subsection 37 (1);
- (c) the person has made a request for correction of personal information under subsection 36 (2); or
- (d) the person is given notice of a request under subsection 21 (1).



**38** La personne responsable peut refuser de divulguer au particulier concerné les renseignements personnels : Exceptions

- a) dont la divulgation est régie par l'article 6, 7, 8, 9, 10, 11, 12, 13 ou 15;
- b) si la divulgation constitue une atteinte injustifiée à la vie privée d'un autre particulier;
- c) qui sont constitués de documents d'appréciation ou d'avis divers recueillis dans le seul but d'établir l'aptitude, l'admissibilité ou les qualités requises relativement à un emploi ou à l'attribution de contrats et d'autres avantages par une institution si la divulgation avait pour effet de révéler la source de renseignements d'une institution dans une situation où il est normal de présumer que l'identité de cette source devait rester secrète;
- d) d'ordre médical dont la divulgation aurait pour effet probable de porter atteinte à la santé mentale ou physique du particulier;
- e) qui constituent un dossier de recherche ou un dossier statistique.

### PARTIE III

#### APPELS

**39** (1) Une personne peut interjeter appel devant le commissaire de toute décision d'une personne responsable si, selon le cas : Droit d'appel

- a) la personne a présenté une demande d'accès à un document aux termes du paragraphe 17 (1);
- b) la personne a présenté une demande d'accès à des renseignements personnels aux termes du paragraphe 37 (1);
- c) la personne a présenté une demande de rectification des renseignements personnels aux termes du paragraphe 36 (2);
- d) la personne a reçu l'avis d'une demande aux termes du paragraphe 21 (1).

Time for  
application

(2) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

Notice of  
application  
for appeal

(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned and any other affected person of the notice of appeal.

Mediator to  
try to effect  
settlement

**40.** The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal.

Inquiry

**41.—**(1) If a settlement is not effected under section 40, the Commissioner shall conduct an inquiry to review the head's decision.

R.S.O. 1980,  
c. 484  
not to apply

(2) The *Statutory Powers Procedure Act* does not apply to an inquiry under subsection (1).

Inquiry in  
private

(3) The inquiry may be conducted in private.

Powers of  
Commissioner

(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts I and II of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

Record not  
retained by  
Commissioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4).

Examination  
on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site.

Notice of  
entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose.

Examination  
under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry and, for that purpose, the Commissioner may administer an oath.

Evidence  
privileged

(9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

- (2) L'appel aux termes du paragraphe (1) est interjeté par le dépôt auprès du commissaire d'un avis d'appel écrit, dans les trente jours de l'avis de la décision qui en fait l'objet. Délai imparti
- (3) Dès la réception de l'avis d'appel, le commissaire en informe la personne responsable de l'institution visée et toute personne intéressée. Avis d'appel
- 40** Le commissaire peut autoriser un médiateur à enquêter sur les circonstances qui entourent l'appel et à tenter de parvenir au règlement de la question qui en fait l'objet. Tentative de règlement par le médiateur
- 41** (1) Si un règlement n'est pas intervenu en vertu de l'article 40, le commissaire mène une enquête afin de réexaminer la décision de la personne responsable. Enquête
- (2) La *Loi sur l'exercice des compétences légales* ne s'applique pas à l'enquête menée en vertu du paragraphe (1). Non-application du chap. 484 des L.R.O. de 1980
- (3) L'enquête peut se dérouler à huis clos. Enquête à huis clos
- (4) Malgré les parties I et II de la présente loi, et toute autre loi ou privilège, le commissaire peut, dans le cadre d'une enquête, exiger que lui soit communiqué un document dont une institution a la garde ou le contrôle et en faire l'examen. Il peut de même aux fins de l'enquête pénétrer dans les locaux d'une institution et en faire l'inspection. Pouvoirs du commissaire
- (5) Le commissaire ne doit pas conserver les renseignements consignés dans un document communiqué en vertu du paragraphe (4). Le commissaire ne conserve pas le document
- (6) Malgré le paragraphe (4), la personne responsable peut exiger que le commissaire consulte sur place l'original du document. Consultation sur place
- (7) Avant de pénétrer dans des locaux en vertu du paragraphe (4), le commissaire informe la personne responsable de l'institution qui les occupe de l'objet de sa visite. Avis de consultation
- (8) Le commissaire peut assigner à comparaître et interroger sous serment la personne qui, à son avis, pourrait avoir des renseignements relatifs à l'enquête. Il peut faire prêter serment à cette fin. Interrogatoire sous serment
- (9) Les paroles prononcées, les renseignements fournis, les documents communiqués ou les objets produits par une personne au cours de l'enquête menée par le commissaire en Éléments de preuve privilégiés



## Protection

(10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

## Idem

(11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*.

R.S.C. 1985,  
c. C-5

## Prosecution

(12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.

## Representations

(13) The person who requested access to the record, the head of the institution concerned and any affected party shall be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

## Right to counsel

(14) The person who requested access to the record, the head of the institution concerned and any affected party may be represented by counsel or an agent.

## Burden of proof

**42.** If a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head.

## Order

**43.—(1)** After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.

## Idem

(2) If the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part.

vertu de la présente loi sont privilégiés, comme s'il s'agissait d'une instance devant un tribunal.

(10) Sauf à l'occasion du procès d'une personne par suite d'un parjure au moment de son propre témoignage sous serment, nulle déclaration ou réponse faite par cette personne ou une autre personne au cours d'une enquête menée par le commissaire n'est admissible en preuve devant un tribunal, dans le cadre d'une enquête, ou au cours d'une instance. Aucun témoignage rendu en cours d'instance devant le commissaire ne peut servir de preuve contre qui que ce soit.

Protection

(11) Le commissaire informe la personne qui fait une déclaration ou donne une réponse au cours de l'enquête menée devant lui, de son droit en vertu de l'article 5 de la *Loi sur la preuve au Canada*, de s'opposer à répondre à une question.

Idem

L.R.C. 1985,  
chap. C-5

(12) Nul n'est passible de poursuite relativement à une infraction à une loi autre que la présente loi, pour s'être conformé à une exigence du commissaire aux termes du présent article.

Poursuite

(13) Il doit être fourni à la personne qui a présenté une demande d'accès à un document, à la personne responsable de l'institution concernée, ainsi qu'à toute personne intéressée par les renseignements, l'occasion de présenter leurs observations au commissaire. Toutefois, nul n'a le droit d'être présent lors de la présentation faite par une autre personne, d'avoir accès à ces observations ou de les commenter.

Observations

(14) La personne qui a présenté la demande d'accès à un document, la personne responsable de l'institution concernée ainsi que toute personne intéressée par les renseignements peuvent être représentées par un avocat ou par un représentant.

Droit à un  
avocat

**42** Lorsque la personne responsable refuse l'accès à la totalité ou à une partie d'un document, c'est à elle que revient le fardeau de prouver que ce dernier constitue une exception précisée par la présente loi.

Fardeau de la  
preuve

**43** (1) Lorsque la preuve est close dans le cadre de l'enquête, le commissaire rend une ordonnance qui règle les questions soulevées par l'appel.

Ordonnance

(2) Si le commissaire confirme la décision de la personne responsable de refuser la divulgation d'un document en totalité ou en partie, il ne doit pas enjoindre à celle-ci de divulguer le document ou la partie visée.

Idem

## Conditions

(3) The Commissioner's order may contain any conditions the Commissioner considers appropriate.

## Notice of order

(4) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 39 (3) written notice of order.

## Delegation

**44.** The Commissioner shall not delegate to a person other than an Assistant Commissioner his or her power to require a record referred to in section 8 to be produced and examined.

## PART IV

## GENERAL

## Costs

**45.—**(1) If no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.

## Exception, personal information

(2) Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.

## Estimate of costs

(3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

## Waiver of payment

(4) A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);



(3) Le commissaire peut assortir l'ordonnance des conditions qu'il juge pertinentes. Conditions

(4) Le commissaire donne par écrit avis de l'ordonnance à l'appelant ainsi qu'aux personnes qui ont reçu l'avis d'appel en vertu du paragraphe 39 (3). Avis de l'ordonnance

**44** Le commissaire ne doit pas déléguer son pouvoir d'exiger la présentation ou l'examen du document visé à l'article 8, sauf au commissaire adjoint. Délégation par le commissaire

## PARTIE IV

### DISPOSITIONS GÉNÉRALES

**45** (1) En l'absence de dispositions d'une autre loi ou prises en vertu d'une autre loi concernant des frais ou droits imputables à la personne qui présente une demande d'accès à un document, la personne responsable exige le paiement : Frais

- a) de frais de recherche pour chaque heure de recherche manuelle requise au-delà de deux heures, afin de retrouver un document;
- b) des frais de préparation du document en vue de sa divulgation;
- c) des frais d'ordinateur et autres frais engagés pour le repérage, la récupération, le traitement et la duplication d'un document;
- d) de frais d'expédition.

(2) Malgré le paragraphe (1), la personne responsable n'exige aucun paiement de frais d'un particulier pour l'accès aux renseignements personnels qui le concernent. Exception quant aux renseignements personnels

(3) La personne responsable d'une institution, préalablement à la divulgation d'un document, fournit à l'auteur de la demande une estimation raisonnable de la somme supérieure à 25 \$, exigible, le cas échéant, en vertu de la présente loi. Estimation des frais

(4) Si, de l'avis de la personne responsable, cette mesure s'avère juste et équitable, la personne responsable supprime en totalité ou en partie la somme exigée en vertu de la présente loi, compte tenu : Suppression du paiement des frais

- a) de l'écart entre le coût réel de traitement, de col-

- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations.

**Review**

(5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee.

**Disposition of payments**

(6) The costs provided in this section shall be paid and distributed in the manner prescribed by the regulations.

**Powers and duties of Commissioner**

**46.** The Commissioner may,

- (a) offer comment on the privacy protection implications of proposed programs of institutions;
- (b) after hearing the head, order an institution to,
  - (i) cease a collection practice that contravenes this Act, and
  - (ii) destroy collections of personal information that contravene this Act;
- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and
- (f) receive representations from the public concerning the operation of this Act.

lecte et de duplication du document et la somme exigée aux termes du paragraphe (1);

- b) du fardeau financier éventuellement imposé au destinataire du document;
- c) des effets, favorables ou non, de la diffusion du document sur la santé et la sécurité publiques;
- d) de toute autre question prescrite par les règlements.

(5) La personne à qui sont imputés des frais en vertu du paragraphe (1), peut s'adresser au commissaire afin d'obtenir une révision, soit du montant de ces frais, soit de la décision de la personne responsable de ne pas les supprimer. Révision

(6) La somme des frais prévus au présent article est versée et répartie de la manière prescrite par les règlements. Répartition des frais

**46 Le commissaire peut :**

Attributions  
du commis-  
saire

- a) présenter ses commentaires sur l'incidence des projets législatifs ou des programmes gouvernementaux proposés sur la protection de la vie privée;
- b) après avoir entendu la personne responsable, enjoindre à une institution :
  - (i) d'une part, de renoncer à un certain mode de collecte de renseignements qui contrevient à la présente loi,
  - (ii) d'autre part, de disposer des fiches de renseignements personnels qui contreviennent à la présente loi;
- c) dans les cas appropriés, autoriser la collecte de renseignements personnels d'autres sources que du particulier lui-même;
- d) entreprendre ou commander des recherches sur les questions qui ont une incidence sur la réalisation des objets de la présente loi;
- e) instituer à l'intention du public des programmes d'information et fournir des renseignements relatifs à la présente loi ainsi qu'au rôle et aux activités du commissaire;



## Regulations

**47.** The Lieutenant Governor in Council may make regulations,

- (a) respecting the procedures for access to original records under section 23;
- (b) prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of "record" for the purposes of this Act;
- (c) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;
- (d) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (e) prescribing time periods for the purposes of subsection 30 (1);
- (f) prescribing the payment and allocation of fees received under section 45;
- (g) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 45;
- (h) designating any agency, board, commission, corporation or other body as an institution;
- (i) prescribing circumstances under which the notice under subsection 29 (2) is not required;
- (j) prescribing conditions relating to the security and confidentiality of records used for a research purpose;
- (k) prescribing forms and providing for their use;

- f) recevoir les observations du public relativement à l'application de la présente loi.

**47** Le lieutenant-gouverneur en conseil peut, par <sup>Règlements</sup> règlement :

- a) établir les formalités d'accès aux documents originaux en vertu de l'article 23;
- b) prescrire les circonstances dans lesquelles les documents qui peuvent être constitués à partir de documents lisibles par machine sont soustraits à la définition du terme «document» pour l'application de la présente loi;
- c) exiger des garanties d'ordre administratif, technique et matériel et en fixer les normes, afin d'assurer la protection et le caractère confidentiel de documents et de renseignements personnels dont une institution a le contrôle;
- d) fixer des normes d'exactitude et d'intégralité des renseignements personnels dont une institution a le contrôle;
- e) prescrire les délais pour l'application du paragraphe 30 (1);
- f) prescrire le versement et la répartition des droits perçus en vertu de l'article 45;
- g) prescrire les facteurs à considérer lors de la suppression en totalité ou en partie des frais exigés en vertu de l'article 45;
- h) désigner une entité, notamment un organisme, un conseil, une commission ou une personne morale en tant qu'institution;
- i) prescrire les circonstances dans lesquelles l'avis visé au paragraphe 29 (2) n'est pas requis;
- j) prescrire les conditions relatives à la sécurité et au caractère confidentiel des documents utilisés à des fins de recherche;
- k) prescrire des formules et prévoir les modalités de leur emploi;

- (l) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act.

## Offences

**48.—(1)** No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a personal information bank that contravenes this Act;
- (c) make a request under this Act for access to or correction of personal information under false pretences;
- (d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act;
- (e) wilfully make a false statement to mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- (f) wilfully fail to comply with an order of the Commissioner.

## Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000.

Consent of  
Attorney  
General

(3) A prosecution shall not be commenced under clause (1) (d), (e) or (f) without the consent of the Attorney General.

Delegation of  
head's  
powers

**49.—(1)** A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

Protection  
from civil  
proceeding

(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice.



- l) traiter de toute question que le lieutenant-gouverneur en conseil estime nécessaire pour réaliser efficacement les objets de la présente loi.

**48 (1) Nul ne doit :**

Infractions

- a) divulguer volontairement des renseignements personnels contrairement à la présente loi;
- b) maintenir volontairement une banque de renseignements personnels contrairement à la présente loi;
- c) appuyer d'une fausse déclaration une demande d'accès à des renseignements personnels ou de rectification de ces derniers présentée en vertu de la présente loi;
- d) entraver volontairement le commissaire dans l'exercice de ses fonctions en vertu de la présente loi;
- e) faire volontairement une fausse déclaration dans le but d'induire en erreur ou de tenter d'induire en erreur le commissaire dans l'exercice de ses fonctions en vertu de la présente loi;
- f) s'abstenir volontairement de se conformer à une décision du commissaire.

(2) Quiconque contrevient au paragraphe (1), est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$.

Peine

(3) Aucune poursuite en application de l'alinéa (1) d), e) ou f) ne doit être intentée sans le consentement du procureur général.

Consentement  
du procureur  
général

**49 (1)** Sous réserve des limitations, restrictions, conditions et exigences qu'elle énonce dans le mandat, la personne responsable peut, par écrit, déléguer tout ou partie de ses attributions à un ou plusieurs dirigeants de l'institution.

Délégation  
des attribu-  
tions de la  
personne  
responsable

(2) Sont irrecevables les actions ou autres instances intentées contre la personne responsable ou la personne qui agit pour son compte ou sous son autorité pour un préjudice subi par suite de la divulgation ou de la non-divulgation de bonne foi de la totalité ou d'une partie d'un document qui fait l'objet d'une demande en vertu de la présente loi ou de l'omission de donner l'avis requis en vertu de celle-ci, si des efforts raisonnables ont été faits pour donner l'avis.

Immunité

Vicarious  
liability of  
institutions  
preserved

(3) Subsection (2) does not relieve an institution from liability in respect of a tort committed by a head or a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted.

Oral requests

**50.**—(1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

Pre-existing  
access  
preserved

(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before this Act comes into force.

Information  
otherwise  
available

**51.**—(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

Powers of  
courts and  
tribunals

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

Application  
of Act

**52.**—(1) This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force.

Non-  
application of  
Act

(2) This Act does not apply to records placed in the archives of an institution by or on behalf of a person or organization other than the institution.

Other Acts

**53.**—(1) This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

Idem

(2) The following confidentiality provisions prevail over this Act:

R.S.O. 1980,  
c. 308

1. Section 90 of the *Municipal Elections Act*.

R.S.O. 1980,  
c. 31

2. Subsection 57 (1) of the *Assessment Act*.

(3) Le paragraphe (2) ne dégage pas l'institution de la responsabilité qu'elle serait autrement tenue d'assumer à l'égard d'un délit civil commis par une personne responsable ou une personne visée au paragraphe (2).

Certaines institutions restent responsables du fait d'autrui

**50** (1) Si une personne responsable, aux termes de la présente loi, peut donner accès à des renseignements, la présente loi n'a pas pour effet d'empêcher cette personne d'y donner accès en réponse à une demande verbale ou en l'absence d'une demande quelconque.

Demandes verbales

(2) La présente loi ne peut être invoquée pour interdire l'accès à des renseignements qui ne sont pas personnels et auxquels le public avait accès immédiatement avant l'entrée en vigueur de la présente loi, en vertu d'une loi, d'une coutume ou d'un usage établis.

Conservation du droit d'accès déjà existant

**51** (1) La présente loi ne fixe aucune limite aux renseignements par ailleurs mis à la disposition d'une partie à un litige en vertu de la loi.

Renseignements disponibles par ailleurs

(2) La présente loi n'a pas d'incidence sur le pouvoir que possède un tribunal judiciaire ou administratif de contraindre un témoin à témoigner ou d'ordonner la production d'un écrit.

Pouvoirs des tribunaux judiciaires et administratifs

**52** (1) La présente loi s'applique à tout document dont une institution a la garde ou le contrôle, que ce document ait été consigné avant ou après l'entrée en vigueur de la présente loi.

Champ d'application de la présente loi

(2) La présente loi ne s'applique pas aux documents déposés aux archives d'une institution par une personne ou par une organisation autre que l'institution, ou pour leur compte.

Cas de non-application de la loi

**53** (1) La présente loi l'emporte sur une disposition ayant trait au caractère confidentiel qui figure dans toute autre loi, sauf disposition contraire dans cette autre loi ou dans la présente loi.

Autres lois

(2) Les dispositions suivantes qui ont trait au caractère confidentiel l'emportent sur la présente loi :

Idem

1. L'article 90 de la *Loi sur les élections municipales*.

L.R.O. 1980, chap. 308

2. Le paragraphe 57 (1) de la *Loi sur l'évaluation foncière*.

L.R.O. 1980, chap. 31



Exercise of  
rights of  
deceased,  
etc., persons

**54.** Any right or power conferred on an individual by this Act may be exercised,

- (a) if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;
- (b) if a committee has been appointed for the individual or if the Public Trustee has become the individual's committee, by the committee; and
- (c) if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

Review of  
this Act

**55.** The Standing Committee on the Legislative Assembly shall, before the 1st day of January, 1994, undertake a comprehensive review of this Act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act.

Commence-  
ment

**56.** This Act comes into force on the 1st day of January, 1991.

Short title

**57.** The short title of this Act is the *Municipal Freedom of Information and Protection of Privacy Act, 1989*.

**54** Les droits et pouvoirs conférés à un particulier par la présente loi peuvent être exercés par :

Exercice des droits au nom de la personne décédée ou incapable

- a) son représentant successoral, dans le cas du particulier décédé, si l'exercice de ce droit ou du pouvoir est relié à l'administration de sa succession;
- b) le curateur aux biens ou à la personne de ce particulier ou par le Curateur public, si ce dernier assume cette fonction;
- c) la personne qui a la garde légitime du particulier, si celui-ci est âgé de moins de seize ans.

**55** Le Comité permanent de l'Assemblée législative doit entreprendre un examen global de la présente loi avant le 1<sup>er</sup> janvier 1994 et faire ses recommandations à l'Assemblée législative sur les modifications à apporter à la présente loi dans l'année qui suit le début de cet examen.

Examen de la présente loi

**56** La présente loi entre en vigueur le 1<sup>er</sup> janvier 1991.

Entrée en vigueur

**57** Le titre abrégé de la présente loi est *Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée*.

Titre abrégé





## CHAPTER 64

### **An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989**

*Assented to December 14th, 1989*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Subsection 20 (1) of the *County of Oxford Act*, being chapter 365 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 66, section 3, is repealed and the following substituted therefor:**

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 19 and the minutes and proceedings of any committee of the County Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the County, to any applicant on payment at such rate as the County Council may by by-law establish.

Inspection  
and copying  
of minutes,  
etc.

**2. Subsection 17 (1) of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 65, section 2, is repealed and the following substituted therefor:**

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 16 and the minutes and proceedings of any committee of the District Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the District Corporation, to any applicant on payment at such rate as the District Council may by by-law establish.

Inspection  
and copying  
of minutes,  
etc.

**3.—(1) Clause (b) in the definition of “institution” in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act, 1987*, being chapter 25, is repealed.**

**(2) The definition of “personal information bank” in subsection 2 (1) of the said Act is repealed and the following substituted therefor:**

“personal information bank” means a collection of personal information that is organized and capable of being retrieved using an individual’s name or an identifying number or particular assigned to the individual.

**(3) Subsections 2 (3), (4) and (5) of the said Act are repealed.**

**(4) Subsection 4 (1) of the said Act is amended by inserting after “this” in the third line “or any other”.**

**(5) Subsection 4 (4) of the said Act is repealed and the following substituted therefor:**

Assistant  
Commissioners

**(4) The Commissioner shall appoint one or two officers of his or her staff to be Assistant Commissioners.**

**(6) Subsection 18 (1) of the said Act is amended by adding thereto the following clause:**

(h) questions that are to be used in an examination or test for an educational purpose.

**(7) The said subsection 18 (1) is further amended by adding thereto the following clause:**

1981, c. 70

(i) submissions under the *Municipal Boundary Negotiations Act, 1981* by a party municipality or other body before the matter to which the submissions relate is resolved under that Act.

**(8) Subclause 21 (1) (e)(iii) of the said Act is repealed and the following substituted therefor:**

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or

**(9) Section 25 of the said Act is amended by adding thereto the following subsection:**

(5) In this section, “institution” includes an institution as defined in section 2 of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. Institution  
1989, c. 63

**(10) Clause 27 (1) (b) of the said Act is repealed and the following substituted therefor:**

- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

**(11) Clause 29 (1) (a) of the said Act is repealed and the following substituted therefor:**

- (a) where there is no such record,

- (i) that there is no such record, and

- (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or

. . . . .

**(12) Clause 34 (2) (c) of the said Act is repealed.**

**(13) Clause 39 (1) (b) of the said Act is amended by adding at the end thereof “or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*”.**

**(14) Subsection 40 (3) of the said Act is repealed and the following substituted therefor:**

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes. Exception

**(15) Subsection 40 (4) of the said Act is repealed and the following substituted therefor:**

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations. Disposal of  
personal  
information

**(16) Clause 41 (c) of the said Act is amended by adding at the end thereof “or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*”.**



**(17) Clauses 42 (l), (m), (q) and (r) of the said Act are repealed.**

**(18) Clauses 45 (d), (e), (f), (g) and (h) of the said Act are repealed and the following substituted therefor:**

- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and
- (g) the policies and practices applicable to the retention and disposal of the personal information.

**(19) Subsection 46 (1) of the said Act is repealed and the following substituted therefor:**

Inconsistent  
use or  
disclosure

**(1) A head shall attach or link to personal information in a personal information bank,**

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 45 (d); and
- (b) a record of any disclosure of that personal information to a person other than a person described in clause 45 (e).

**(20) Subsection 50 (4) of the said Act is amended by inserting after "Act" in the second line and in the fourth line in each instance "or the *Municipal Freedom of Information and Protection of Privacy Act, 1989*".**

**(21) Subsection 55 (1) of the said Act is amended by inserting after "this" in the fourth line "or any other".**

**(22) Subsection 55 (2) of the said Act is amended by inserting after "this" in the fifth line "or any other".**

**(23) Subsection 55 (3) of the said Act is amended by inserting after "this" in the sixth line "or any other".**

**(24) Subsection 56 (2) of the said Act is amended by striking out "the Assistant Information Commissioner or the Assistant Privacy Commissioner" in the second and third lines and inserting in lieu thereof "an Assistant Commissioner".**

(25) Subsection 57 (1) of the said Act is amended by striking out “may” in the second line and inserting in lieu thereof “shall” and by striking out “or for correction of a record” in the third and fourth lines.

(26) Section 57 of the said Act is amended by adding thereto the following subsection:

(1a) Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.

Exception,  
personal  
information

(27) Subsection 57 (3) of the said Act is amended by striking out “may” in the first line and inserting in lieu thereof “shall”.

(28) Clause 57 (3) (d) of the said Act is repealed.

(29) Subsection 57 (4) of the said Act is repealed and the following substituted therefor:

(4) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head’s decision not to waive the fee.

Review

(30) Subsection 58 (2) of the said Act is repealed and the following substituted therefor:

(2) A report made under subsection (1) shall provide a comprehensive review of the effectiveness of this Act and the *Municipal Freedom of Information and Protection of Privacy Act, 1989* in providing access to information and protection of personal privacy including,

Contents of  
report  
1989, c. 63

- (a) a summary of the nature and ultimate resolutions of appeals carried out under subsection 50 (1) of this Act and under subsection 39 (1) of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*;
- (b) an assessment of the extent to which institutions are complying with this Act and the *Municipal Freedom of Information and Protection of Privacy Act, 1989*; and
- (c) the Commissioner’s recommendations with respect to the practices of particular institutions and with respect to proposed revisions to this Act, the *Municipal Freedom of Information and Protection of Privacy Act, 1989* and the regulations under them.

**(31) Section 60 of the said Act is amended by adding thereto the following clause:**

- (ia) prescribing conditions relating to the security and confidentiality of records used for a research purpose.

**4. Subsection 78 (1) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

Inspection  
and copying  
of minutes,  
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 77 and the minutes and proceedings of any committee of the council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the corporation of the municipality, to any applicant on payment at such rate as the council may by by-law establish.

**5. Subsection 19 (1) of the *Regional Municipality of Durham Act*, being chapter 434 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 2, is repealed and the following substituted therefor:**

Inspection  
and copying  
of minutes,  
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

**6. Subsection 19 (1) of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 9, is repealed and the following substituted therefor:**

Inspection  
and copying  
of minutes,  
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a



reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

**7. Subsection 19 (1) of the *Regional Municipality of Halton Act*, being chapter 436 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 15, is repealed and the following substituted therefor:**

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection  
and copying  
of minutes,  
etc.

**8. Subsection 18 (1) of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 21, is repealed and the following substituted therefor:**

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection  
and copying  
of minutes,  
etc.

**9. Subsection 18 (1) of the *Regional Municipality of Niagara Act*, being chapter 438 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 28, is repealed and the following substituted therefor:**

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the officer appointed under section 17, and the officer shall, within a reasonable time, furnish copies

Inspection  
and copying  
of minutes,  
etc.

of them, certified under the officer's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by-law establish.

**10. Subsection 22 (1) of the *Regional Municipality of Ottawa-Carleton Act*, being chapter 439 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

Inspection  
and copying  
of minutes,  
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 21 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

**11. Subsection 19 (1) of the *Regional Municipality of Peel Act*, being chapter 440 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 38, is repealed and the following substituted therefor:**

Inspection  
and copying  
of minutes,  
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

**12. Subsection 18 (1) of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 44, is repealed and the following substituted therefor:**

Inspection  
and copying  
of minutes,  
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any



applicant on payment at such rate as the Regional Council may by by-law establish.

**13. Subsection 18 (1) of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 52, is repealed and the following substituted therefor:**

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection  
and copying  
of minutes,  
etc.

**14. Subsection 18 (1) of the *Regional Municipality of York Act*, being chapter 443 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 57, is repealed and the following substituted therefor:**

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the officer appointed under section 17, and the officer shall, within a reasonable time, furnish copies of them, certified under the officer's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection  
and copying  
of minutes,  
etc.

**15.—(1) This Act, except subsection 3 (7), comes into force on the 1st day of January, 1991.**

Commence-  
ment

(2) Subsection 3 (7) shall be deemed to have come into force on the 1st day of August, 1989.

Idem

**16. The short title of this Act is the *Municipal Freedom of Information Statute Law Amendment Act, 1989*.**

Short title



















